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Part 1

OVERSIGHT OF MARINE FISHERIES MANAGEMENT

HEARINGS

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE OVERSIGHT OF THE MARINE FISHERIES MANAGEMENT ACT

PART 1

MAY 17 AND 18, 1989

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CONTENTS

Page
Opening statement by Senator Kerry 1
Opening statement by Senator Stevens 3
Opening statement by Senator Gorton 5
Opening statement by Senator Breaux 6
Opening statement by Senator Packwood 7
Opening statement by the Chairman 8
Opening statement by Senator Inouye 9

CHRONOLOGICAL LIST OF WITNESSES

MAY 17, 1989

Borden, David V. D., chairman, New England Fishery Management Counil 44
  Prepared statement 46
Collier, Barry, president, Pacific Seafood Processors Assn 104
  Prepared statement 108
Evans, William E., Under Secretary of Commerce for Oceans and Atmosphere, NOAA 15
  Prepared statement 19
  Questions of Senator Breaux and the answers 29
  Questions of Senator Packwood and the answers 32
  Questions of Senator Stevens and the answers 38
Mitchell, Henry, executive director, Bering Sea Fishermen's Assn 113
  Prepared statement 115
Smith, Dr. Tim D., Chief, Population Dynamics Branch, Northeast Fisheries Center, NOAA-NMFS 66
Smith, Richard J., Principal Deputy Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State; accompanied by Edward E. Wolfe, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs; and James Douglas, Department of Commerce 77
  Prepared statement 80
  Questions of Senator Stevens and the answers 96
Stevenson, Barbara 70
Troll, Kate, executive director, Southeast Alaska Seiners Assn 102
Unsoeld, Hon. Jolene, U.S. Representative from Washington 10
  Prepared statement 11

MAY 18, 1989

Opening statement by Senator Packwood 141
Opening statement by Senator Stevens 142
Opening statement by Senator Gorton 185
Evans, Edward D., executive director, Alaska Factory Trawler Assn 214
  Prepared statement 216
  Questions of Senator Packwood and the answers 230
  Questions of Senator Stevens and the answers 234
Harville, David, owner, Kodiak and Western Trawler Group 207
  Questions of Senator Packwood and the answers 210
Jernigan, Alex, member, Gulf of Mexico Fishery Management Council 160
  Prepared statement 161
Jones, Robert P., executive director, Southeastern Fisheries Assn 147
  Prepared statement 149
McCulla, Edward F. II, market development director, Motivatit Seafoods, Inc 172
  Prepared statement 173

Page
Mulready, Paul A., on behalf of the American Fishing Tackle Manufacturers Assn. 143
Peterson, John G., chairman, North Pacific Fishery Management Council 185
  Questions of Senator Packwood and the answers 188
Thomson, Arni, executive director, Alaska Crab Coalition 191
  Prepared statement 193
  Questions of Senator Packwood and the answers 204

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Adams, Hon. Brock, U.S. Senator from Washington, statement 251
American Fisheries Society, statement 294
Bohannon, Frank, president, American High Seas Fisheries Assn., statement 252
Collinsworth, Don W., commissioner, Alaska State Department of Fish and Game, letter 325
Concerned scientists, statement 363
Department of State cable 131
Earthtrust, statement 372
Greenpeace, USA, statement 271
Independent Shellfishing Assn., statement 343
Japan Squid Driftnet Fishery Assn., statement 311
Macnow, Alan, consultant, Japan Fisheries Assn., letter 335
Mitchell, Hon. George, U.S. Senator from Maine, statement 249
Moberly, Stan, immediate past president, American Fisheries Society, letter 323
National Wildlife Federation, statement 279

OVERSIGHT OF MARINE FISHERIES MANAGEMENT

WEDNESDAY, MAY 17, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
NATIONAL OCEAN POLICY STUDY,
Washington, DC.

The subcommittee met at 9:34 a.m. in room SR-253, Russell Senate Office Building, Hon. John F. Kerry (vice-chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Penny Dalton and Mike Nussman, professional staff members; Bob Eisenbud, minority professional staff member; and Earl Comstock, minority staff counsel.

OPENING STATEMENT BY SENATOR KERRY

Senator KERRY. The hearing will come to order. Good morning to all and welcome to today's hearing, which will review legislation that affects the nation's fishery resources and the fishing industry.

In particular, we are going to be addressing two major issues: one, the reauthorization of the Magnuson Fishery Conservation and Management Act; and second, the progress of ongoing negotiations with Japan, South Korea, and Taiwan over the current threat posed by the driftnet fleets in the international waters of the North Pacific.

I would like to take just a moment to make a couple of observations, that are both personal and I think important in the context of both these hearings and where we are going.

Perhaps the issue is escaping some of the folks over at the OMB or the Commerce Department. I hope not. But I think it is clear that our coastal resources are moving towards an environmental catastrophe.

We have seen one in real terms with the Valdez oil spill, but pollution is fouling estuaries and bays all around this nation. Our beaches have become a dumping ground for plastic pollution and medical waste.

Global warming—at least the leading indicators, hurricanes and other weather pattern changes—are eroding current coastal areas, and the potential sea level rise according to almost all scientific evidence threatens shores and wetlands within the lifetimes of most of us.

Equally importantly, fishing stocks are declining dramatically in many areas, including those areas of highest demand in the United

States. Shellfish beds are facing increasing closures. You can say literally that the oceans are in tough shape.

The National Oceanic and Atmospheric Administration is the agency that has the lead in acting on these issues. It needs to act boldly and persuasively to reverse the drift toward coastal environmental catastrophe. NOAA is in charge of aquaculture, coastal management, fishery management, global warming research, Weather Service, hurricane warnings, and all oceanic research.

That is a pretty hefty mandate and a critical one for our natural resources. But you have to ask whether the people responsible for making the choices that allow NOAA to carry out its mandate are sensitive to the demands being placed on the agency and whether or not they are sensitive to the full mandate that has been given to it.

The current Administration's budget for fiscal year 1990 proposes to cut overall NOAA funding by 21 percent. That translates into a $231 million cut from this year.

In light of the choices that we face regarding the preservation of our coastlines, climatic change and so forth, I personally believe that that kind of cut is simply irresponsible and courts disaster. We may not see the quick and dramatic damage caused by the Valdez oil spill or by Three Mile Island, but nevertheless we face clear and unprecedented erosion of natural resources which are the treasure of this nation and of the world.

Obviously we cannot permit that to happen.

Now, with regard to the Magnuson Act, though appropriations for fiscal year 1989 total $72 million, only $56 million is in the Administration's request for FY 90—a 22 percent cut.

Furthermore, the Bush budget calls for a 46 percent cut in the National Marine Fisheries Service. So at a time when certain fishing activities need an increase in order to continue the progress we have made since the enactment of the Magnuson Act, the Administration proposes a huge cut.

Written testimony from several witnesses requests funds to improve fishery data collection and analysis. I recall similar discussions when I chaired a hearing two years ago. However, the budget request has been cut by 24 percent.

In addition, conservation and management funding has been cut by 26 percent.

One other part of the fishery problem that we are going to look at today is this question of declining stocks in the North Atlantic fishery. Groundfish stocks are seriously down. Cod, haddock, yellowtail, pollack are all declining and have reached historically low levels. With the increase in our domestic fishing effort, with new and improved fishing technologies, Georges Bank and the Gulf of Maine are basically being overfished.

So we have to ask today, is the management of our resources adequate? Do we need to increase our fishery enforcement? Is the research telling us all that we need to know?

And what about the future of aquaculture? If the natural stocks are declining, should we start to invest considerably more in fish farming in this country?

We currently pour millions into agricultural research and schools to support the grain belt and cattle industry. At the same time fish are becoming the food of choice for more Americans, as well as for consumers in other countries who are buying our fish.

The other day, I was talking to the owner of a fishing enterprise in Massachusetts who informed me that one tuna was sold to the Japanese for $40,000. With such increasing demand in other countries, we face a marketplace that, unless we have strong management, is, as the market always does, going to cause serious pressure on the resource. It is easy to understand why fishermen are overharvesting groundfish because the market is obviously demanding it.

Now, the Magnuson Act may hold answers to these questions. We created it in 1976 in order to conserve and manage our fishery resources, which at that time were viewed as being depleted by overfishing. That overfishing was primarily a problem caused by foreign fishing fleets in our coastal waters. Subsequently, we established management authority over resources within the 200-mile limit, with the exception of migratory tuna. In short, we responded to the problem.

The question today is whether or not we need some further response. It is certainly clear that we need an agency that is capable of providing the data and the policies necessary to allow us to make choices.

Finally, we will review today the question of the driftnet policy, and we will hear where those negotiations stand. As we know, each year tens of thousands of marine mammals, hundreds of thousands of sea birds, and vast quantities of non-targeted fish are killed in driftnets.

According to a new report released, it is estimated that some 1,400 vessels from Japan, Taiwan, and South Korea fishing in the North Pacific collectively deploy an estimated 30,000 miles of net each night during the fishing season. That is equal to enough net to go around the world almost one and a half times.

And we also know that lost and discarded driftnets, known as "ghost nets", pose serious hazards to marine mammals and sea birds. Their biodegradable time period is some 350 years, but we do not even know what the full measure of that problem may yet be.

One and a half years ago we enacted the Driftnet Monitoring, Assessment, and Control Act, and we will want to hear where we stand with respect to the requirements of that legislation.

So the agenda is a big agenda. The issues are obviously very important ones, and we look forward to hearing from our expert witnesses today regarding these matters.

Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Thank you very much, Mr. Chairman. I am delighted to hear your statement, and I think that those of us from this side of the aisle would echo your comments. As a matter of fact, you have sort of stolen my speech.

But I do believe the cuts in NOAA are unconscionable. There is no way that they can be defended.

As a matter of fact, the position the Administration is taking, preliminarily at least, in terms of negotiations with the Japanese are a total anathema to Alaskans, and we cannot understand the lack of understanding of our great fear of the driftnet changes that Japan is proposing and is implementing now based upon an apparent agreement by our people. I hope that that is a tentative agreement, and that some of us will be heard with regard to that agreement.

The idea that we will have but 32 of 460 commercial squid vessels, observed, and no observers on the rest of the 1,100 Japanese driftnet vessels in the North Pacific. This has just got to be viewed as unacceptable in terms of a response to the Driftnet Act and the whole concept that we were trying to achieve there in terms of some recognition by other users of the North Pacific of the environmental consequences of the massive changes in the fishery.

Mr. Chairman, I think the thing that we have to find a way to concentrate on is to try to find additional ways to fund the activities of both the Coast Guard and the NOAA people, when basically they are monitoring commercial activities that threaten the coastal environment.

Nothing has come out so much from the *Exxon Valdez* as the tremendous cost to government of the consequences of a disaster of that type, and I believe that one of the things we should explore here in this committee is additional ways to allow people to protect themselves.

For instance, our fishermen want observers on vessels within the 200-mile limit. We are having difficulty getting an understanding of that. And I think the industry is prepared to fund itself with regard to that type of observer program, at least partially.

But above all, I would hope that those who are here today are able to explain why we should take a position with regard to foreign users of our seas that is different from that we take with regard to our domestic users of our seas. The foreign users are not paying their way, and there must be some way found to make them pay their way, and they are also not observing what I would call the rules of common sense with regard to the use of the oceans.

I look forward to working with you and other members of the committee, but the real difficulty I have right now is that every time we take one step forward we are going three steps back.

The 200-mile limit bill, the Magnuson Act, was a tremendous achievement, I think. The Driftnet Act signaled to the world that we wanted common sense conservation and environmental principles to apply to the oceans beyond the 200-mile limit.

The success of both are dependent upon the funding for the agencies that you have addressed and the attitude of Congress as far as what is sufficient to comply with the Acts we have already passed. And I think these hearings are extremely important.

Let me just in a footnote say, unfortunately we have a markup in the Rules Committee on a series of bills that some of you have introduced. I am going to have to run back and forth, and I do apologize if I am not here. There is a very important panel I think coming in here on both the driftnet and the North Pacific fisheries issues. I do hope to be here at that time. If I am not, it will be because I am in the Rules Committee.

Thank you.

Senator **Kerry**. Thank you very much, Senator Stevens. I appreciate that, and we know of your continuing involvement and interest on this.

Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator **Gorton**. Thank you, Mr. Chairman.

I have some of the same problems this morning as Senator Stevens referred to. But I do want to say how important I consider this set of hearings to be, both in the Pacific and in the Atlantic.

I want to echo what Senator Stevens said in approving of your opening statement and of his, but I do want to make a few remarks on what seems to me to be the most urgent single issue facing us at the current time—the tentative agreement reached recently with the government of Japan and our own State Department on the monitoring and enforcement of Japanese driftnet fishing vessels.

I have been privy to much of the negotiations through meetings with the State Department negotiating team and have followed this tentative agreement over the last few months. To put it mildly, Mr. Chairman, I am not impressed with the results.

I have heard the bitter dissatisfaction expressed by literally hundreds of constituents from the State of Washington whose livelihood depends upon the availability of U.S.-origin salmon.

As a result of my dissatisfaction with the tentative agreement the State Department reached with the Japanese, I joined with other members of the Washington State Congressional delegation, one of whom will be our lead-off witness here today, in urging Secretary Mosbacher to demand that the tentative driftnet agreement be renegotiated because it does not meet the standard set out in the Driftnet Act of 1987.

I have also co-sponsored a resolution which is to be introduced by Senator Stevens calling on the Administration to reject the tentative agreement and, if an acceptable agreement is not reached by the 29th of June, as specified in the Driftnet Act of 1987, to impose sanctions on Japan as specified in the Pelly amendment.

Mr. Chairman, the Driftnet Act calls for monitoring and enforcement agreements with Japan and other nations who use driftnets on the high seas. The monitoring agreements are to provide statistically reliable data on the directed and incidental catch of U.S. marine resources by foreign driftnet vessels.

The enforcement agreements are to provide for effective enforcement of laws, regulations, and agreements on those same fleets. Mr. Chairman, the 460 Japanese so-called squid vessels which make up that fleet are believed to be taking millions—and I mean millions of U.S.-origin salmon in their 30 to 40-mile long driftnets.

This is not to mention the hundreds of thousands of sea birds and tens of thousands of marine mammals snared in the name of Japanese squid fisheries.

This agreement calls for observers on only 32 vessels to monitor this disgrace. The enforcement aspect of the agreement is equally distressing. Under this agreement, the Japanese increase their vessel days at sea to 500 and expand their fishery 120 miles north into cooler waters frequented by salmon.

The agreement calls on the Japanese to add one—I repeat, one—more patrol vessel, for a total of five to enforce this agreement over the hundreds of thousands of square miles in the North Pacific.

Furthermore, Mr. Chairman, the Japanese refuse to participate in a pilot program which would require transponders on a limited number of their vessels. This would have allowed us merely to track the movement of their fleet within the 120 extra northerly miles in which we generously allowed them to fish.

Mr. Chairman, we have in this agreement gone beyond asking the fox to guard the chicken coop. We have opened the door and promised not to watch.

Now, I understand the difficulties in addressing the problems of protecting resources of United States origin from foreign countries on the high seas. I believe that we must stand firm and continue to negotiate to reach enforcement and monitoring agreements which provide the statistically reliable information required by the Driftnet Act.

Mr. Chairman, the tentative agreement which the State Department reached with Japan does not meet these standards and should be renegotiated.

Senator KERRY. Thank you very much, Senator Gorton.

Senator Breaux.

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. Thank you, Mr. Chairman, for holding these hearings. They are very important. We have a number of major issues that I hope we pursue when we have our Administration witnesses testify.

I am concerned about the question of fairness and balance on the councils. When we first wrote this Act many years ago, we were talking about balanced councils representing all legitimate interests who are concerned about the regulation of the fishing industry.

I want to make sure that the councils are in fact balanced and they are representative of the legitimate recreational interests and the legitimate commercial fishing interests in this country. I think this will give us a good opportunity to look at that.

I expect the question of whether tuna should be regulated under the Act will appear once again. Because of the highly migratory nature of tuna, it has traditionally been regulated and managed through international agreements, which I personally think is the right way to handle it. That issue I think will be considered.

I want to visit with the Administration on the real mess that we have in the Gulf and in the southern Atlantic dealing with the turtle excluder devices which were required because of the interaction between the shrimping industry, our nation's largest fishing industry, and endangered species of sea turtles.

We have a real mess, and I cannot classify it any way other than that. We have asked the National Academy of Sciences to look at whether these devices will work or not.

The Academy is not having public meetings. They are having closed meetings. They are using public funds to have closed meetings. Shrimpers are not represented on the panel, but people who are in the business of manufacturing the turtle excluder devices are represented. I think the Academy's actions need to be questioned very seriously.

So I think this is a good opportunity. Thank you, Mr. Chairman, for having the hearings.

Senator KERRY. Thank you, Senator Breaux, very much.

Senator Packwood.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, thank you.

I have a special interest in Senator Magnuson's Fishery Conservation and Management Act. I was not on the Commerce Committee at the time the Act was passed, although I was a principal sponsor of it. But through the generosity of Senator Magnuson, I was a member of the conference, although not a member of the committee.

When we went to conference with the House, Senator Breaux was then in the House and was on that conference at the time.

We had two goals in mind when we passed this Act. One was to try to preserve the fishery for American fishermen. At that time it was being heavily fished by foreign fleets, and relatively few American fishing fleets; and we wondered if there would be a way that we could ensure that Americans would have a first preference.

Over the last 13 years, we have by and large succeeded at that. There is relatively modest fishing now in the 200-mile zone by foreigners.

At the same time, we created the fishery management councils, and I remember warning the fishermen at the time. I said: What you are going to get into is a situation not unlike what we have with the lumber industry and the Forest Service now. The Forest Service is going to attempt to estimate how much timber can be cut and the lumber people will say it is not enough, and that battle always goes on.

And I said, now you are going to have these councils and they are going to estimate how many fish can be caught and you are not going to like it. And they said, oh no, that will never happen, that will not be a problem at all; once we get the foreigners out, we are sure we can work that out.

Well, clearly we have not worked it out, and you could just see it coming sure as night and day come.

So I am very interested in hearing especially the North Pacific panel, obviously, when they testify tomorrow, because that affects my state.

Secondly, I want to echo everything that has been said about the driftnet problem. America has made a good faith effort to intelligently utilize the 200-mile zone and practice good conservation in the 200-mile zone, and that is what has led to some of these arguments between the councils and the fishermen as to what is good conservation.

But lord knows we have tried outside the 200-mile limit. We have tried it with whales, we have tried it with all other kinds of fish. We have entered into treaties, and this driftnet problem is an absolutely egregious violation of the spirit of what we are trying to accomplish.

The next-to-nothing agreement that has been made with Japan is just that, it is next to nothing. I think we would be better off with no agreement than this agreement, because the agreement, once made, is going to be said by the Japanese to be the only agreement we need, that is the end of it, now we have taken care of the problem.

Unfortunately, you do not revisit these problems every year. If you undertake what one of the parties thinks is a major act, then that party does not want to come back to it next year, and next year, and next year, and next year.

So as we address the driftnet problem, which frankly is a bigger problem than anyone ever grasped two, three, four years ago. I think it is unwise to take a small step. I would rather take no step and keep trying for a complete solution than to take a very small step which will not solve the problem, but which people will say has solved the problem.

Thank you, Mr. Chairman.

Senator KERRY. Thank you very much, Senator. And needless to say, your perspective on this is both very helpful and very important, and we welcome it.

I have opening statements from Senators Hollings and Inouye that I will include in the record.

[The statements follow:]

OPENING STATEMENT BY THE CHAIRMAN

During a recent visit to South Carolina, Charles Kuralt of CBS News remarked that, in all his years talking with his countrymen and observing the American scene, what he finds most striking about the United States in recent years is that—for the first time in our history—Americans are not consciously building and sacrificing to improve the lot of the next generation. Certainly, there is plenty of evidence to back up that assertion, the most obvious example being the shameful federal budget deficits and the huge run-up in our national debt. But I can also cite a number of legislative initiatives that belie Kuralt's gloomy assessment. One good example of positive, future-oriented government action is the Magnuson Fishery Conservation and Management Act.

To appreciate the achievement of the Magnuson Act, you have to recall the dire threat posed to our coastal fisheries. From the days of the Pilgrims, Americans have harvested herring, cod, flounder, and other fish in such abundance that our marine resources seemed inexhaustible. But by the mid 1970s, we were witnessing the severe depletion of fish stocks across the North Atlantic. A virtual invasion of foreign fishing fleets off the U.S. coasts plundered vast schools of fish and threatened the livelihood of American fishermen.

The Magnuson Act put a stop to this indiscriminate rape and depletion of our precious fishery resources. Specifically, the Act did two things. It staked out a U.S. claim to jurisdiction over waters within 200 miles of the coast. And it set up a network of regional management councils tasked with intelligently managing the harvest of fish stocks. Despite the inevitable trial and error along the way, this Magnuson "management regime" has worked well.

For starters, the Magnuson Act has once again "Americanized" our coastal fisheries, ensuring to U.S. commercial and recreational fishermen their rightful lion's share of the annual harvest. Secondly, the Magnuson Act has given us the means to address new threats posed to our fishery resources by Americans themselves: extensive coastal development, rapid coastal population growth (South Carolina's Grand Strand experienced a 1,500 percent increase in population between 1945 and 1980), the pressure of increased fishing, and—most devastating of all—the pollution of our ocean and coastal waters. These multiple threats have stressed our fishery resources and, as an example, all but wiped out some stocks of gamefish prized by Carolina fishermen.

In recent years, however, skillful fishery management has coaxed along a resurgence of several key stocks. The most stunning success story is the Spanish mackerel, which had become all but non-existent off the South Carolina coast by the late 1970s to mid 1980s. Today, once again, South Carolina anglers are catching Spanish mackerel in abundance. Similar, though less dramatic, successes have been scored with king mackerel and other popular gamefish.

Indeed, the Magnuson Act has sent positive economic ripples throughout the country—I can personally attest to its positive impact on South Carolina's economy. Bear in mind that the 750,000 South Carolinians who fish the state's salt waters spend hundreds of millions of dollars on everything from tackle, bait and boats, to food, lodging and transportation. Plentiful, well-managed fisheries are a key ingredient in South Carolina's economic success story.

Nonetheless, the days of superabundant fish stocks are gone forever. With foreigners and Americans, commercial fisherman and recreational englers all eyeing the South Atlantic fisheries, we must confront a basic fact of life: there aren't enough fish to go around. We must make choices and establish priorities. And, again, this is precisely the purpose of the Magnuson Act's eight regional fishery management councils.

I look forward to this morning's hearing to initiate the Committee's consideration of legislation to reauthorize the Magnuson Act. We still have must to learn about fishery management and about balancing the competing interests of various types of fishermen. But the Magnuson Act has stood the test of time. It is a good example of constructive government action designed to preserve a vital natural resource—our coastal fisheries—for generations to come.

OPENING STATEMENT BY SENATOR INOUYE

Mr. Chairman: I commend you for your leadership today in addressing important issues concerning the health of our fishery resources, trends in the fishing industry, and the effectiveness of federal fishery management in the North Atlantic, South Atlantic, Gulf and Alaskan fisheries.

I am disappointed, however, to learn that no witnesses were invited to discuss fisheries issues of concern to the U.S. Pacific Islands including Hawaii, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (CNMI).

Hawaii is America's only island state. Further, 49 percent, or 1.6 million square nautical miles, of the 3.2 million square nautical mile U.S. Exclusive Economic Zone (EEZ), surround Hawaii, American Samoa, Guam, Hawaii, the CNMI and U.S. Pacific possessions. Without question, our marine environment is our major resource.

The two primary issues of importance to the U.S. Pacific Islands are drift gillnet fishing and the inclusion of tuna under the Magnuson Act.

The Western Pacific Regional Fishery Management Council's Pelagics Fishery Management Plan in effect since March 23, 1987, prohibits all drift gillnet fishing by foreign fishing vessels in the EEZs surrounding Hawaii, American Samoa, the CNMI and Guam by foreign fishing vessels. The plan also prohibits domestic fishermen from using drift gillnets unless the fishermen obtain experimental fishing permits approved by the National Marine Fisheries Service. Further, the Hawaii State Legislature recently adopted legislation prohibiting the use or possession of gillnets within the State of Hawaii's EEZ.

The inclusion of tuna under the Magnuson Act is supported by the Governors of Hawaii, Guam, American Samoa and the CNMI, as well as the Western Pacific, Atlantic, and Gulf Coast Fishery Management Councils. I look forward to reviewing this matter in greater detail this summer during the Commerce Committee's hearing on the inclusion of tuna under the Magnuson Act.

Mr. Chairman, to ensure that the concerns of the U.S. Pacific Islands are fully considered, I request permission to submit additional letters for the record.

Thank you for this opportunity to share my views on this matter with you.

Senator **KERRY**. We do have a big agenda. Let me just note one change in that agenda. We will welcome Representative Jolene Unsoeld from the Third Congressional District of Washington to make a brief statement. Thank you very, very much, Representative.

STATEMENT OF HON. JOLENE UNSOELD, U.S. REPRESENTATIVE FROM WASHINGTON

Ms. UNSOELD. Thank you, Mr. Chairman. I do appreciate this opportunity to speak before you and to commend you for devoting a portion of your extremely crucial hearing to the driftnet problem.

The illegal high seas interception of U.S. salmon by driftnet fleets from Taiwan, South Korea, and Japan is probably the most explosive issue now facing North Pacific fisheries. Our fishermen are telling us, as you have heard already this morning, that we are losing millions of dollars of our fish.

Under the Driftnet Act, if a nation fails to enter into the necessary agreement by June 29th, it is subject to trade sanctions on fishery products under the so-called Pelly amendment. That would not be the end of the world and it might be a lot better than our signing off on the recent agreement that has come out of our talks with Japan.

Mr. Chairman, a reliable assessment of the nature of the problem is what we must have. This agreement signals that the Japanese are willing to negotiate, but it does not go far enough.

The proposal from the State Department that now lies on the desk of the Secretary of Commerce allows additional waters to be fished by Japanese driftnet fisheries; we are requiring fewer observers than had been felt absolutely necessary by the industry; and we will not have transponders on the fishing vessels that do not have observers.

We will have a pilot project for the transponders, but they are going to be on our vessels, not on the Japanese vessels.

Mr. Chairman, this morning we are delivering to the Secretary of Commerce the letter referred to by the distinguished gentleman, the Senator from Washington, our joint letter urging that the negotiations be taken up again. We will also be delivering a letter from our Governor of Washington State, Booth Gardner, saying that the agreement is not satisfactory and should not be signed.

I am also submitting to you a political cartoon which I think summarizes the feeling in the Northwest of what those driftnets are doing on the high seas.

And finally, Mr. Chairman, I would like to say that in our state we have quieted the wars between the sports fishermen and the commercial fishermen. They have been united to enhance our fisheries.

We are spending tens of millions of dollars to get—under the Pacific Northwest Power Planning Act, enhanced fisheries. We are spending millions on screens to get a few more fingerlings through the turbines of our hydroelectric dams without being chewed up.

We are spending lots of money to enhance our fisheries and we are sending more baby salmon than ever out into the world. But Mr. Chairman, they are being kidnapped. Please help us to get the sufficient data so that these grown-up salmon can find their way home.

Thank you.

[The statement follows:]

Statement of the Honorable Jolene Unsoeld
on the High Seas Interception of Salmon
and the
Tentative Driftnet Agreement Between the United States and Japan
before the
Senate Committee on Commerce, Science, and Transportation

May 24, 1989

Thank you Mr. Chairman. I appreciate the opportunity to testify before your Committee this morning and I want to commend you for devoting a portion of this hearing to the specific problem of high seas interception of salmon by foreign driftnet fleets.

The illegal high seas interception of U.S. salmon by driftnet fleets from Taiwan, South Korea, and Japan is the most explosive issue now facing North Pacific Fisheries. Our fishermen and scientists tell us that these foreign fleets are stealing an estimated $21 million worth of U.S. salmon annually and, at the same time, indiscriminately killing thousands of seals, dolphins and porpoises and tens of thousands of marine birds every year.

In 1987, Mr. Chairman, this Committee, led by the efforts of the distinguished Senators from Alaska, recognized the destructive nature of the foreign driftnet fleets and the impact that they are having on our resources by drafting the Driftnet Impact Monitoring, Assessment, and Control Act. This legislation, as passed by both Houses and signed by President Reagan, requires monitoring and enforcement agreements with nations that use driftnets on the high seas. The purpose of these agreements is to provide statistically reliable data on the directed and incidental catch of U.S. living marine resources by foreign driftnet vessels. If a nation fails to enter into the necessary agreements by June

29, 1989, it is subject to trade sanctions on fishery products under the so-called "Pelly Amendment".

With the deadline for reaching driftnet agreements fast approaching, the U.S. State Department has recently notified us that they have reached tentative monitoring and enforcement agreements with the Government of Japan. While this agreement sends a positive signal that the Japanese are willing to work with the U.S. in developing information on the effects of their high-seas fishery on U.S. resources, I do not believe that this agreement is adequate or fulfills the requirements of the Driftnet Impact Act.

Administration officials claim that this tentative agreement will provide reliable information. I disagree.

Mr. Chairman, a reliable assessment of the nature, extent, and effects of the Japanese driftnet fleet on U.S. resources requires monitoring of the entire Japanese driftnet operation throughout its range. By closely reviewing the U.S. - Japanese agreement, however, you will see that no fishery observers are required for the 200 permitted vessels in the "salmon" fleet, only one fishery observer will cover the 474 permitted vessels in the "large-mesh" fleet, and only 32 fishery observers, of which only 14 are North American, will cover the 460 permitted "squid" fleet.

The enforcement part of the agreement is equally distressing. Under the tentative agreement, the Japanese will add one more patrol vessel; bringing the total to five Japanese vessels patrolling the hundreds of thousands of square miles in the North Pacific. We must also remember that beginning this year, the Japanese have expanded their fishery an additional 120 miles north, into the cooler waters frequented by our salmon.

Perhaps my greatest concern regarding the enforcement part of the agreement is that the Japanese refused to accept a pilot program to carry automatic real-time satellite position fixing devices on a limited number of its vessels. By all accounts, this type of program is vital to effective enforcement on the high seas and was to lay the foundation for an expanded program for the entire foreign fleet by 1990.

Mr. Chairman, the recent Commerce Department's report, authorized under the Driftnet Act, claims that there is serious concern about the incidental catches of fish, sea birds, and marine mammals. However, because the U.S. was allowed to monitor only a the few cases of high seas driftnet fishing,it was impossible to determine how much damage the fleets were inflicting on U.S. resources. This emphasizes the need for comprehensive and reliable monitoring program.

Mr. Chairman, while I fully understand the difficulties in addressing the problems of protecting resources of United States origin from foreign countries on the high seas, I believe we must stand firm and continue to negotiate to reach enforcement and monitoring agreements that provide the statistically reliable information required under the Driftnet Act. Accepting this agreement would be not only be inconsistent with the Act but would continue to leave U.S. resources at risk and should be rejected.

Finally, I would like to inform the Committee that I have joined 13 of my colleagues in a letter to Secretary Mosbacher expressing our belief that tentative driftnet agreement with the Government of Japan is inadequate. Again, we believe we must stand firm and continue to negotiate.

I would like to submit for the record a similar letter from Governor Booth Gardner of the State of Washington. Both of these letters will be delivered to the Secretary of Commerce this morning. I would also like to submit for the record an editorial cartoon depicting the plight of our resources under continued pressure from the for foreign driftnet fleets

That concludes my statement Mr. Chairman. Again, I thank you for the opportunity to appear before your Committee this morning. I look forward to working with you and other members of the Committee on this and other important northwest fisheries issues.

Senator KERRY. Thank you very much, Congresswoman. The only correction I would give you is they are being fishnapped.

Ms. UNSOELD. Yes.

Senator KERRY. Thank you very much for taking the time. We appreciate it.

We welcome now the Honorable William Evans, who is the Under Secretary of Commerce for Oceans and Atmosphere, and Mr. David Borden, Chairman of the New England Fishery Management Council.

Mr. Evans, again my apologies. You were more than patient last time. I am delighted that you are up front this time, and we begin with your testimony. And I thank you again for your indulgence in the course of that long session that we had.

Mr. EVANS. Thank you very much, Mr. Chairman.

STATEMENT OF WILLIAM E. EVANS, UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. EVANS. Since my full testimony has been submitted for the record, I would like, with your permission, to summarize what I think are the major points.

Senator KERRY. We welcome that, and without objection your full testimony will be placed in the record as if read.

Mr. EVANS. In addition to that, although it is not in my submitted testimony, I do have a few comments on the driftnet issue that I would like added at the end of this testimony since it is a very major one. Also I am currently talking to the Secretary of Commerce on this, and would like to include that information, too.

Senator KERRY. We welcome that. Thank you.

Mr. EVANS. I am very, very pleased to have this opportunity to discuss marine fisheries management, including reauthorization of the Magnuson Fishery Conservation and Management Act.

This is normally something that the head of the National Marine Fisheries Service would be doing. I was at one time the head of the National Marine Fisheries Service, so I am glad that I have the opportunity, instead of Jim Brennan, who is in Florida, to appear before this committee.

The Administration will be submitting legislative proposal recommending reauthorization of the Act at the level consistent with the President's budgetary proposals.

I would like to say that I also appreciated many of the comments that you made, Mr. Chairman, this morning in your opening statement. I think you summarized some of the major problems that we in NOAA have had over the past several years, and I think they were right on the mark.

In the 13 years since the Act took effect, the Magnuson Act has succeeded in Americanizing the nation's fisheries resources. In joint efforts with the Regional Fishery Management Councils, we have created opportunities for the American fishing industry to grow and develop. Thirty fishery management plans and six preliminary management plans have resulted in the growth of U.S. fisheries and the displacement of the foreign fishing fleet.

From 1977 to 1988, domestic commercial landings nearly doubled, to five million metric tons. Foreign fishing was reduced to 62,000 metric tons in 1988 from a peak of 1.8 million tons in 1977.

During the past ten years, we have witnessed the most rapid buildup of a fishing industry in modern times. Today many of our fleets are the most advanced in the world. This is due in large part to industry, which has made the investments and developed technology, and also the Congress in enacting policies that created opportunities for American fishermen, and also NOAA's and the councils' vigorous implementation of these policies.

Joint venture operations gave U.S. fishermen an opportunity to sell nearly 1.5 million metric tons of fish to foreign buyers in 1988, at a value of $214 million, and this was only the beginning.

In the Pacific Northwest and Alaska, for example, the amount of fish processed by the U.S. industry in 1989 will be more than ten times the amount processed by them in 1986, and the U.S. industry will utilize virtually all of the available resources. The U.S. factory trawlers accounted for about eight percent of the U.S. processing in 1986, but will account for 86 percent in 1989.

The development of the U.S. industry has also led to a dramatic rise in U.S. fisheries exports. In 1988, edible fish exports grew to a record $2.2 billion from $1.6 billion in 1987, and up from one billion only five years ago.

Although the U.S. fishermen have accomplished a great deal in the last decade, what I just told you was the good news. The bad news is that the challenges presented, as you mentioned in your opening statement, by increasing Americanization of our fisheries are growing.

Two of the most critical problems we must deal with are the prevention of overfishing and the allocation of a finite resource. Simply stated, there are too many domestic fishermen and too few fish.

Many of our fisheries must be controlled lest we allow them to become overcapitalized and overfished. Two particular problems make this difficult: habitat degradation, which you also mentioned in your opening statement, and limits on available enforcement resources.

One of the most difficult problems to be faced in the coming years will be the allocation decisions between competing U.S. domestic interests. We must now allocate limited resources among commercial, recreational, Native American and subsistence fishermen, and between joint venture fishermen and those who deliver the fish to domestic processors.

Allocation decisions among these competing groups will require better resource and fisheries data, as well as better documentation that the allocation decisions are equitable, legal, and in the national interest.

Illegal foreign fishing in the Pacific has become a serious problem with which we must deal. Recent instances in point have occured in the context of increased levels of fishing in the "donut hole" off Alaska and the very serious high seas salmon interception problem in the Pacific.

Solving these problems will require new ways to protect, conserve, manage, and develop our nation's living marine resources.

We must seek better ways to manage our fisheries cooperatively with the States.

Congress and NOAA need to assist the councils in their effort. One problem has been lack of stable and sufficient funding, particularly for data gathering, research and enforcement. We must have a constant source of funding that will allow us to develop the necessary programs to deal with the issues.

We believe the Administration's proposed marine fisheries user fee should be considered as a step in this direction. The Administration supports reauthorization of the Magnuson Act at the levels consistent with the President's budget for fiscal year 1990. This would be $55.9 million.

We also recommend some changes to the Act, and let me touch briefly on three of those we consider the most important.

DOMESTIC FEE LEVELS

This amendment would allow the collection of domestic fees for purposes over and above the recovery of administrative costs incurred in issuing permits. This should be determined on a fishery-by-fishery basis under the requirements of the Magnuson Act and other applicable laws.

Those who benefit from the use of marine fish resources, including those allowed to participate in limited access fisheries, should pay for programs to manage and conserve those resources. I would also point out that the Regional Fishery Management Councils favor this provision.

ENFORCEMENT PENALTIES

This amendment would provide criminal sanctions for interfering with activities of our observers. This is the minimum protection we can afford those individuals who are required to endure considerable hardship and risk of bodily harm in an effort to carry out their assigned duties.

As an aside, Mr. Chairman, I would like to point out that one of my first duties, when I came on as the Assistant Administrator for Fisheries, was to authorize seizure of a Korean ship because the Korean skipper assaulted a female observer on board his vessel.

We also believe that the limit on civil penalties should be increased from $25,000 to $100,000. This would provide NOAA with a more effective enforcement mechanism, particularly for very serious violations.

The Administration will also propose allowing for the reimbursement of States for cooperative enforcement activities from the proceeds of seized properties or from fines and penalties.

The Administration will propose a number of changes in the way we handle foreign fishing. Some of these are fairly technical, but one change we think should be made relates to foreign fishing fees. The current formula for calculating foreign fishing fees is complex, and results in fees that are unrealistically high since foreign fishing has decreased so drastically.

We would like to see the Secretary given more flexibility in setting foreign fishing fees.

Mr. Chairman, that concludes the summary of the material in my prepared text. As I mentioned, I understand the committee is also interested in questions of the recent agreement negotiated with Japan regarding driftnets, and I am prepared to make comments on that, time permitting, sir.

[The statement and questions and answers follow:]

TESTIMONY OF

WILLIAM E. EVANS
UNDER SECRETARY FOR OCEANS AND ATMOSPHERE
U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Committee:

My name is William E. Evans and I am Under Secretary for Oceans and Atmosphere, U.S. Department of Commerce.

I am pleased to have this opportunity to discuss marine fisheries management, including the reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA). The Administration will be submitting its legislative proposal, recommending reauthorization of the Act at a level consistent with the President's budgetary proposals.

In the 13 years since the Act took effect, the Magnuson Act has succeeded in Americanizing our Nation's fishery resources. Through our joint efforts with the Regional Fishery Management Councils we have been able to create opportunities for the American fishing industry to develop and grow. Thirty fishery management plans and 6 preliminary management plans developed by the Regional Fishery Management Councils, and implemented by NOAA

Fisheries, have resulted in the growth of U.S. fisheries and the displacement of foreign fishing. From 1977 to 1988, domestic commercial landings nearly doubled to 5 million metric tons. Foreign fishing was reduced to 62 thousand metric tons in 1988 from a peak of 1.8 million tons in 1977.

Statistics such as these do not disclose the real dynamic activity and accomplishments in our fisheries. During the past 10 years we have witnessed the most rapid buildup of a fishing industry in modern times. When the Magnuson Act was implemented, most of the fisheries off our shores were conducted by foreign fishermen. Today many of our fleets are the most advanced in the world. While this is due in large part to industry which made the investment and developed the technology, it is also the result of Congressional action in enacting policies, that created opportunities for American fishermen; and of NOAA's and the Councils' vigorous implementation of those policies.

There has been a rapid increase in domestic catches under joint venture operations. Joint venture operations have given U.S. fishermen an opportunity to sell nearly 1.5 million metric tons of fish to foreign buyers in 1988 at a value of $214 million. The experience gained in catching and delivering large quantities of fish to highly mechanized at-sea processors has set the stage for the development of domestic processing capability, both on-shore and at-sea. In the Pacific Northwest and Alaska, for example, we estimate that the amount of fish processed by

U.S. industry in 1989 will be more than ten times the amount processed by them in 1986, and will utilize virtually all of the available resources. Where U.S. factory trawlers accounted for about 8 percent of the U.S. processing in 1986, they are expected to account for 86 percent in 1989. We are increasingly finding the introduction of U.S. motherships, which only process fish, being served by U.S. harvesting vessels.

The development of the U.S. industry has also led to a dramatic rise in U.S. fisheries exports. In 1988, edible fish exports grew to a record $2.2 billion from $1.6 billion in 1987, and up from 1 billion only five years ago.

Although U.S. fishermen have accomplished a great deal in the last decade, the challenges presented by increasing Americanization of our fisheries are growing. Two of the most critical problems we must deal with are the prevention of overfishing and the allocation of finite resources. Simply stated, there are too many domestic fishermen and too few fish. For example, New England groundfish, Gulf red drum, red snapper and king mackerel, and some stocks of Pacific salmon are all in a seriously overfished condition and in need of being rebuilt. As previously noted, we have witnessed many successes in the Pacific Northwest and Alaska. Growth fisheries in these areas must be controlled, lest we fall into the same overcapitalized, overfished situation we find in the fisheries just noted. The overfishing problem is further aggravated by the degradation of habitats that support the stocks. Also limited enforcement resources have hindered our ability to effectively implement management programs which would help resolve the overfishing problem.

One of the most difficult problems to be faced in the coming years will be the allocation decisions among competing U.S. domestic interests. We must now allocate limited resources among commercial, recreational, Native American and subsistence fishermen, or between joint-venture fishermen and those who deliver fish to domestic processors. Allocation decisions among these competing groups will require better resource and fishery data, as well as better documentation that the allocation decisions are equitable, legal, and in the national interest. They must be able to withstand judicial review in an increasing number of court cases.

Despite the greatly reduced foreign presence in our waters, illegal or adverse foreign fishing in the Pacific has become a serious problem with which we must deal. Recent instances in point have been the increased level of fishing in the "donut hole" off Alaska and the high seas salmon interception problems in the Pacific.

Solving these problems will require new ways to protect, conserve, manage, and develop our Nation's living marine resources. We must seek better ways to manage our fisheries cooperatively with the states and other interests by providing guidance and leadership in the conservation of the resources. At the same time, we must provide necessary flexibility for real-time management and efficient operations to achieve maximum benefits to the Nation. The Councils, for example, have been actively pursuing the implementation of limited access programs in many of the fisheries around the country. Such innovative approaches to management as this may well provide a solution to overcapitalization and overfishing, if they are supported by affected fishermen.

Although we are working to resolve these most difficult issues, Congress and NOAA need to assist the Councils in their effort. We have been seriously handicapped recently because many of our programs, particularly for data gathering, research, and enforcement, have been limited by a lack of stable funding. We must have a constant source of funding that will allow us to develop the necessary programs to deal with the issues. We have continued to work on identifying alternative funding mechanisms to reduce or offset Federal fisheries conservation and management costs. Two years ago, the administration proposed the establishment of marine fishing user fees dedicated to underwrite funding for important marine fisheries activities. Increased support for this initiative that we have witnessed in the past few months demonstrates the growing recognition of the need to provide a stable source of revenue for Federal marine fisheries management programs. A significant opportunity exists to shift part of the burden of fisheries programs to those who directly benefit from them. If we can achieve this, we will be assured of adequate funds for a strong, effective fisheries program.

The Magnuson Act authorization for appropriations expires on September 30, 1989. The Administration recommends that the Act be reauthorized for fiscal year 1990 at a level of $55,930,000, and for fiscal years 1991 and 1992 at such sums as may be necessary. It further recommends several amendments to the Act. The most important of these amendments I will address are: (1) domestic fee levels, (2) enforcement penalties, and (3) foreign permits, fees and data.

DOMESTIC FEE LEVELS

The amendment would allow the collection of domestic fees for purposes over and above the recovery of administrative costs incurred in issuing permits (the current permissible level). The need for and level of a proposed fee would be determined on a fishery-by-fishery basis under the requirements of the Magnuson Act and other applicable law. Those who benefit from use of our marine fish resources, including those allowed to participate in limited access fisheries, should pay for programs to manage and conserve those resources. The potential increase in fees would help defray the cost of vital fisheries management programs. I would also point out that the Regional Fishery Management Councils favor this provision.

ENFORCEMENT PENALTIES

The Act prohibits any person on a fishing vessel from interfering with our enforcement officers and imposes criminal sanctions for those actions, but it does not afford the same protection for observers. We believe any person impeding, intimidating, interfering or assaulting our observers should be prosecuted for a criminal offense. This is the minimum protection we can afford those individuals who are required to endure considerable hardship and risk of bodily harm in an effort to carry out their assigned duties.

We further propose to increase the limit on a civil penalty from $25,000 to $100,000. Increasing the maximum penalty to $100,000 would provide NOAA with a more effective enforcement mechanism, particularly for more serious violations when other sanctions are unavailable or we choose not to impose them because of particular circumstances. Although a variety of sanctions, including forfeiture of fish and vessel or permit suspension are available in addition to the $25,000 fine, these more strict sanctions sometimes cannot be applied. For example, an unpermitted foreign vessel may flee the EEZ before the Coast Guard can seize the vessel and its catch.

An issue that has impacted our cooperative relationships with the States and other Federal agencies is the reimbursement from proceeds of seized property, or from fines or penalties, for functions performed by those entities. The Department of

Commerce, the Department of Transportation, and individual States are parties to cooperative enforcement agreements that authorize the States to enforce the Magnuson Act. Under these agreements, no reimbursement to the States is authorized except the loan of property acquired through purchase, forfeiture or surplus. Proceeds of seized property subject to judicial forfeiture are deposited into the Department of Justice Asset Forfeiture Fund, but it is not certain that the States can obtain reimbursement from that fund. Also, many seizures made under the Act are not subject to the Justice Department fund because they are handled administratively rather than through the judicial system. Accordingly, the Department of Commerce recommend a provision allowing for the reimbursement from the proceeds of seized property, or from fines and penalties, for functions performed by State agencies. We believe that this amendment would encourage increased participation on the part of States under cooperative enforcement agreements.

FOREIGN PERMITS, FEES AND DATA

Currently, the Fishery Management Councils are allowed up to 45 days to comment on foreign fishing applications. While this requirement appropriately applies to those vessels that are catching, taking, or harvesting fish in U.S. waters, it applies equally to any merchant vessel that may support those vessels. We propose to exempt from the 45-day comment period those merchant vessels that are used to transfer, transport, and store fish taken from foreign vessels, or used to supply those vessels in the EEZ. This would eliminate an unnecessary burden on those support vessels that are contracted on an opportunistic basis and diverted to rendezvous with processing or harvesting vessels on an as-needed basis. Reducing the time for processing permits for these vessels would alleviate an unnecessary burden on Regional Councils and potentially make vessels available for transshipment on a timely schedule and make more capacity available for U.S. harvesting vessels that deliver to foreign at-sea processors.

We also propose that the fees charged foreign vessels in the EEZ be set at some reasonable figure rather than being based on the current complex statistical formula. In setting fees, the Secretary is now required to consider the cost of carrying out the provisions of the Act with respect to foreign fishing. With the drastic decline in foreign catches, fees based on the formula could be well in excess of management costs associated with the foreign effort or the ex-vessel values of the fish being targeted. Our proposal would provide necessary flexibility in setting realistic fees and would give the Secretary authority to increase fees as necessary at some future date. It would also reduce a considerable burden on the Federal agencies who must maintain complex accounting systems largely to supply data for this purpose.

We propose to exclude data regarding joint ventures and foreign catch by country from the confidentiality requirements of the Act. Under Section 303(d) of the Act, the Secretary is required to protect confidential data submitted under a fishery management plan so that the submitter cannot be identified. This has resulted, on occasion, in the Councils members and the public being denied access to needed data for use in developing management measures. This amendment is particularly important for adequate documentation in plan development and approval, and could serve to mitigate contentious issues with foreign nations.

Mr. Chairman, as noted earlier, the Administration will be submitting proposed legislation to the Congress in the very near future.

Thank you.

Responses to Questions for the Record of the May 17 and 18, 1989 Hearings before the Senate Committee on Commerce, Science, and Transportation on Reauthorization of the Magnuson Fishery Conservation and Management Act

Responses to Senator Breaux

Q. 1. Section 302)(b)(2)(A) of the Magnuson Fishery Conservation and Management Act (MFCMA) requires the Secretary of Commerce to ensure that individuals appointed to the Councils are "knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resource of the geographical area concerned." In addition, this section calls upon the Secretary to "ensure a fair apportionment...of the active participants (or their representatives) involved in the fisheries under Council jurisdiction."

Q. 1a. How does the Department of Commerce define the terms "knowledgeable and experienced" and "fair apportionment"?

A. Guidelines concerning operation of the Regional Fishery Management Councils under the Magnuson Act were published in the Federal Register (50 CFR Part 601) on January 17, 1989. These guidelines interpret statutory requirements affecting Council membership and composition.

When submitting nominations, Governors are charged with nominating only those persons who meet the qualification requirements of the Magnuson Act, that each nominee possesses knowledge and experience with regard to conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Guidelines for Council Operations and Administration describe seven specific categories for this knowledge and experience to be demonstrated in one or more ways. Council members should be individuals with a proven commitment to the wise use of our Nation's resources, and a willingness and ability to participate actively in the Council process. Therefore, nominees must provide career histories relating to one or more of these seven categories. Additionally, Governors are requested to submit the reasons for their nominations, and must also provide documentation that each nomination was made in consultation with commercial and recreational fishing interests. Fair apportionment is discussed under questions 1b. and 1c.

Q. 1b. What specific actions are taken by NMFS and the Secretary of Commerce to meet their obligations under Section 302(b)(2)(A)?

A. To ensure a fair apportionment of the active participants in the fisheries under the Councils' jurisdiction, the Secretary, when filling a State's obligatory seat, may select from any of the nominees (i.e., either obligatory or at-large) submitted by the Governor of that State for Council membership. This flexibility will enhance the Secretary's ability to ensure a fair apportionment. Due to its in-depth relationship with all of the Regional Fishery Management Councils, as well as with the national and international fishing communities, NOAA Fisheries is able to facilitate the Secretary's responsibility to ensure a "fair apportionment" by continuing to provide appropriate analyses on membership to him at any time, but particularly during the annual selection process.

Q. 1c. Based on the backgrounds of the Council members, how does the apportionment of each of the regional Councils (particularly the Gulf) compare to the apportionment of participants in the fisheries each Council is managing?

A. See the attachment regarding the Councils' composition. It is often difficult to identify the sector of the industry or the specific fisheries with which a member may be involved. We have attempted to categorize members into commercial, recreational or other areas of concern based on an evaluation of the biographies submitted. The following table, however, may not be a true reflection of a member's activities or interest, particularly on any one specific issue. We would caution that any such characterization of this type may be misleading and should be used carefully.

The apportionment of Council seats by managed fisheries is not a necessary factor in the selection process and, in fact, is not appropriate. Rather, the individuals selected should be those that are primarily concerned with the well-being of all marine resources and will focus their attention on the management of the resources to the benefit of the Nation. Although the Secretary is limited to those individuals nominated by the governor of each State, NOAA Fisheries believes that the slates submitted annually reflect a genuine attempt to meet the constant challenge of balancing all of the competing Council interests.

Current Composition of Regional Fishery Management Councils

Council	Commercial	Recreational	Other
New England	8	3	0
Mid-Atlantic	4	6	2
South Atlantic	2	3	3
Gulf of Mexico	5	5	1
Caribbean	1	2	1
Pacific	3	4	1
North Pacific	7	0	0
Western Pacific	2	3	2

Q. 2. The MFCMA, at section 304(a)(1)(B), requires that upon receipt of a proposed fishery management plan the Secretary, "immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law." At the hearing, you stated that the burden for making FMP allocation decisions that were fair and equitable for all fishermen (national standard 4) lays with the Councils.

- **That statement would indicate that NMFS is not carrying out its review responsibility and is just rubberstamping the Council plans. Is this the case? Please explain.**

- **I would like to know the present review criteria used by NMFS and an explanation of why you believe it is sufficient for the purposes of the MFCMA.**

A. Allocation decisions in FMPs virtually all involve controversial divisions of limited fishery resources among groups of U.S. fishermen. The public Council forum provides the opportunity for discussions of these issues by affected citizens before the knowledgeable regional bodies that Congress established. As the Councils consider these questions, they are provided with ecological, economic, and social information by NOAA Fisheries and other State and academic sources. Also, NOAA Fisheries offers advice on procedural aspects to facilitate the presentation of the Council's judgments to the Secretary. With the best available information at hand, Councils are prepared to make difficult allocation recommendations and justify them in terms of the Magnuson Act and other applicable law. In the event that a Council submission is inconsistent with a statutory requirement, the Secretary will disapprove an FMP/amendment and advise the Council of the inconsistencies. The guidelines for national standard 4 are very specific not only with regard to discrimination and fairness and equity, but set forth a definition of allocation, call for an analysis of allocations existing in the fishery and of those made in the FMP, and describe the factors in making allocations.

The guidelines for national standard 5 discuss limited access as a type of allocation of fishing privileges and set forth factors that must be considered and the needed analyses and explanations. We believe that these guidelines, in combination with the other guidelines for national standards, other provisions of the Magnuson Act, and other applicable law, are sufficient review criteria to carry out the purposes of the Magnuson Act.

Responses to Senator Packwood

Q. 1. It has been suggested that the decision about the total permissible catch, from a biological standpoint, should be clearly separated from the allocation question about who should be permitted to catch it, from a social and economic standpoint.

Q. 1a. Do you agree with that suggestion?

Q. 1b. If so, who should decide the allocation question?

A. We agree with the proposal to separate decisions about total permissible catch from allocations among competing groups to the maximum extent possible. Our foremost concern, of course, is with the condition of the resource. To this extent, we have recently published an amendment to 50 CFR Part 602 that requires the Councils to adopt a measurable definition of overfishing for each stock under management. This provides a standard by which the condition of the resource and any proposed regulation to prevent overfishing will be measured. With this knowledge, Councils are the appropriate entities to develop optimum yield (OY) and fishing allocation apportionments.

Council decisions concerning allowable harvests are based on biological standards but inevitably affect allocations. Using the estimate for maximum sustainable yield, Councils are required to determine an optimum yield for each fishery. OY is equal to the level of harvest that provides the greatest overall benefit to the Nation, and is based on economic and social concerns as well as biological considerations. The Council, therefore, has a great deal of flexibility in setting fishing at any level it deems appropriate for the good of the Nation. This flexibility gives the Council members extraordinary power in establishing the type of fishery they feel will provide the greatest net benefits and, in effect, establishes priorities and allocations regarding participants in the fishery.

In addition, Councils must frequently allocate annual OY directly among competing fishing groups. This is probably the Council's single most difficult obligation, because by definition under national standard 4 of the Magnuson Act, the OY must be fairly distributed among all people involved in the fishery. The national standard guidelines, which interpret the standards, go to some length to assure that any allocation of fishing privileges must be necessary to further legitimate objectives of the plan or achieve the stated OY, and must be calculated to promote conservation. The rationale and basis for any allocation decisions, however, must be documented by the Councils, and must be evaluated and approved by the Secretary prior to implementation.

Q. 1c. What criteria should be utilized to decide how much of a biologically permissible quota should be allocated to each group of sportfishermen, seiners, trawlers, etc., all of whom are competing for the same fish?

A. NOAA Fisheries does not believe that a realistic list of criteria can be developed upon which allocations to each group of fishermen must be based. Drastic differences among species, fisheries, current economic or operating conditions, and the composition of an industry would make any such list virtually useless. As indicated in the answer to questions 1a. and 1b., national standard 4 and the guidelines for fishery management plans provide as good an overall guide or list of criteria as is possible. The standard states that allocations shall be "(A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." It is particularly important that each Council consider and document these and the "other factors" described in the guidelines. This provides the foundation upon which the Secretary, as well as the public, can evaluate and determine that the decision to allocate the resources was based on a consideration of all beneficial and adverse effects of the action. The conscious decisions made by the Council about the trade-offs among these effects must be made available to review prior to approval by the Secretary.

Q. 2a. What do you think that phrase, "fair apportionment" should be interpreted to mean?

A. See answers to Senator Breaux's questions 1 and 2.

2 b. Should the Secretary be required to take a snapshot of the fishery, analyze the relative proportion of sportsfishermen, seiners, trawlers, etc. engaged in it and ensure the same proportional representation on the Council?

A. In nominating individuals for seats on the Councils, the governors are, first and foremost, required to select nominees that are "knowledgeable and experienced" in the fisheries. It is presumed that these individuals will be primarily concerned with the well-being of the marine resources under their jurisdiction and will focus their attention on the management of the resources to the benefit of Nation. Obviously, some nominees come to the Councils with a specific orientation to certain aspects of either commercial or recreational fisheries. In some cases this orientation is obvious, but in many others it is not at all clear. Nevertheless, each member agrees to work for the good of the Nation as a whole. Each member must take an oath of office and swears "... to conserve and manage the living marine resources of the United States of America by carrying out the business of the council for the greatest overall benefit of the

Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests and always aware and protective of the public interest in those resources."

It is important to note that the Secretary is constrained in his appointments to the nominees submitted by the Governors of each affected State. Furthermore, 50 CFR section 601.33 requires only that the Secretary ensure a fair apportionment of active participants and, to the extent practicable, that those dependent on the fisheries for their livelihood are fairly represented. NOAA Fisheries does not believe that exact proportional representation is attainable. While attempts are made to identify the interests of each nominee and achieve some general balance of representation, NOAA Fisheries cannot ensure an exact proportion of representation because, simply, we cannot certify each individual's allegiance to a specific sector. We think it more appropriate, within some bounds of balance, to select those individuals who are the most knowledgeable, and who are genuinely concerned about the welfare of the resource for the Nation's benefit.

Q. 3a. For each Regional Fishery Management Council, please provide a list of the members over the past three years.

A. See the attached membership roster which identifies expiring terms for members appointed in 1986-88.

Q. 3b. A list of the fisheries and approximate number of vessels engaged in each of the fisheries under the jurisdiction of each Council.

A. The following table provides a list of the fisheries under each Council's jurisdiction and provides some information on the participants in each fishery. Precise data in some fisheries are not kept on this information and, therefore, are not readily available on the number of participants in all fisheries. In some cases, data presented are only rough estimates of the number of vessels or fishermen in commercial or recreational fisheries. Due to the nature of recreational fisheries and the sparsity of data in that sector, information on recreational anglers or boats may represent the total number in a geographical area rather than those who consistently target on a certain species. If additional information or more precise data are needed, further study would have to be undertaken.

Fishery/FMP	Participants
New England Fishery Management Council:	
1. Atlantic sea scallops	346 commercial vessels
2. American lobsters	8400 commercial fishermen Recreation not available
3. Northeast multispecies	1336 commercial vessels 7.7 million recreational
4. Atlantic salmon	0 commercial 3000 recreational
Mid-Atlantic Fishery Management Council:	
5. Atlantic mackerel, squid, and butterfish	1814 commercial vessels Recreation not available
6. Summer flounder	731 commercial vessels 31,711 recreational
7. Surf clam and ocean quahog	146 commercial vessels
South Atlantic Fishery Management Council:	
8. Atlantic billfishes and sharks	Commercial bycatch: 250 tuna longline 625 swordfish 19000 Recreational boats
9. Spiny lobster*	510 commercial vessels Recreation not available
10. Snapper-grouper	39 commercial vessels 196 charter boats 133,449 private rec boats
11. Gulf and South Atlantic corals*	5 scientific permits
12. Coastal Migratory Pelagic Resources*	1647 commercial permits 660 charter permits 7.6 mil recreation angler
13. Atlantic swordfish	625 commercial permits Recreation not available
Gulf of Mexico Fishery Management Council:	
14. Gulf of Mexico shrimp	3690 commercial vessels 5054 commercial boats Recreation not available
15. Gulf of Mexico stone crab	466 commercial vessels Recreation not available
16. Reef fish	435 commercial vessels 348000 private rec. boats 579 charter boats
17. Red drum	Not available

Caribbean Fishery Management Council:

18. Caribbean shallow water reef fish	1500 commercial boats Recreation not available
19. Caribbean spiny lobster	2000 commercial vessels 12000 rec. fishermen

Pacific Fishery Management Council:

20. Pacific Coast groundfish	523 commercial vessels Recreation not available (365 rec. vessels in CA)
21. Commercial and Recreational salmon off California, Washington, and Oregon	7740 commercial licenses 1003 rec. charter license Private rec not available
22. Northern anchovy	41 commercial vessels

Western Pacific Fishery Management Council:

23. Precious corals	None
24. Western Pacific crustacean	11 commercial vessels Recreation not available
25. Western Pacific pelagics	Not available
26. Bottomfish/seamount groundfish	27 commercial vessels 0 recreational

North Pacific Fishery Management Council:

27. King crab	216 commercial vessels
28. Bering Sea groundfish	699 vessel permits
29. Gulf of Alaska groundfish	923 comm. vessel. permit
30. High seas salmon	2900 commercial troll 17000 recreational

* Joint South Atlantic and Gulf Plan

Q. 3c. An indication and explanation of what fisheries are represented by those members and how appointment of the members listed in (a) has served to ensure, to the extent practicable, a fair apportionment of the seats to representatives of the active participants in the fisheries listed in (b).

A. NOAA fisheries does not have a list of the fisheries which each Council member represents. Furthermore, it would be extremely difficult to identify the specific fisheries which a Council member would represent, if any. Other than those members who indicate that they are fishermen operating in specific fisheries, most members are involved with a wide range of species which do not fall within a single fishery. In any event, we believe that each Council member is concerned with the well-being of all species, and will work to conserve and manage all species in the ecosystem.

Q. 4. The fisheries of the North Pacific are evolving, and the types of vessels and people participating in them are changing as a result of various provisions of the Act.

Is the Act adequate to guide decisions about how the fisheries evolve?

A. The Magnuson Act is structured to provide preference to domestic harvesting and processing interests with the goal of achieving the greatest net benefit to the Nation. The fisheries are now almost completely Americanized. NOAA Fisheries, therefore, must now turn its attention primarily to the conservation and protection of the living marine resources under management and the allocation of such resources among domestic interests. This must be done in an orderly manner, and any allocations must be fair and equitable to all parties. The Secretary is not required, nor would it be appropriate, to direct the evolution of the industry in one direction or another; the marketplace will effectively accomplish this. The primary focus of our actions will be the conservation of the resource, the prevention of overfishing, and the wisest use of the resource for the benefit of the Nation.

With regard to the fisheries of the North Pacific, NOAA Fisheries believes vessels operating in the Joint Venture or other fisheries should freely compete in the marketplace. Once domestic processing has the capacity and the expectation to handle the total allowable harvest of a species and foreign processing is phased out, the marketplace will determine which vessels and method(s) of operation will survive and prosper. We believe the most efficient and effective approach to the question of evolving industries is to let the marketplace dictate any structural shifts in the industry. As stewards of the resource, NOAA fisheries will protect the resource and, in that process, ensure that all segments of the industry are treated fairly and equitably, intervening only when the resource is in jeopardy.

It must also be recognized that the Councils have considerable flexibility in their management of the fisheries. On occasion, the Councils have in the past and will in the future undertake efforts to influence the evolution of the fisheries. We have seen the Mid-Atlantic Council structure its regulations in the squid fisheries to emphasize domestic processors and the North Pacific Council is currently considering regulations to curtail roe stripping operations in the pollock fishery, redirecting operations to more fully utilize the whole fish. We have also seen numerous regulations to protect small boat and "traditional" fishing operations. Any such actions must be documented and justified in terms of preventing overfishing and achieving the wisest use of the resource.

Responses to Senator Stevens

Q. 1. In February 1989, the U.S. and U.S.S.R. concluded a memorandum of understanding for bilateral cooperation in the field of enforcement of salmon conservation measures.

Paragraph (6) of the MOU calls for the formation of a working group of experts to consider further cooperative enforcement and other efforts to enhance salmon conservation and management.

Q. 1a. Have the U.S. members of the working group of experts been appointed? If so, who are the members? If not, when will they be appointed, and by whom?

A. The working group of experts is comprised of the following members:

Department of State
Jeff Miotke

National Marine Fisheries Service
Morris M. Pallozzi
Milton M. Rose
Dean Swanson
Steve Springer

Coast Guard
Cdr. Bill Anderson
Lt. Scott Buschman
Ltjg. Kurt Cox

Q. 1b. When will the working group of experts meet?

A. The first meeting of the working group of experts occurred on May 25, 1989.

Q. 1c. Who, within the Federal Government, is responsible for implementing the MOU?

A. The Department of State coordinates the implementation process. The lead on the technical issues is with the National Marine Fisheries Service, and the lead on enforcement matters is with the Coast Guard.

Q. 1d. Were any efforts made to contact representatives of the U.S.S.R. and enlist their cooperation and assistance under the terms of the MOU when a Taiwanese driftnet squid fishing vessel was recently sighted fishing outside the squid area and pursued by Coast Guard vessels and aircraft?

A. This is an on-going case. In view of the fact that the U.S. Coast Guard required no assistance on this particular enforcement operation and that the Soviet Union does not have relations with Taiwan, no assistance was requested from them. The State Department had prepared instructions to the embassy in Moscow to discuss the matter with the Soviet government of the situation, but when the Taiwan vessel consented to come into a U.S. port it was decided that there was no need for Soviet assistance at that time.

Q. 1e. Were representatives of the USSR informed of this enforcement activity pursuant to paragraph (4) of the MOU?

A. Since this case is still on-going they have not been officially informed of the details yet, but we will inform of them once the case has been concluded.

Q. 1f. Will this incident involving the Taiwanese squid vessel be discussed at the upcoming U.S.-U.S.S.R. discussions as an example of an opportunity for cooperation and the need to work out detailed arrangements for implementation of the MOU?

A. This incident will be discussed at the next U.S.-U.S.S.R. discussions. There is a desire to exchange data that would lead to more effective enforcement by both sides.

Q. 2. Please provide for each Regional Fishery Management Council:

Q. 2a. The total value of the combined fisheries subject to the jurisdiction of each Council in FY 1987 through FY 1989;

THE TOTAL VALUE OF COMBINED FISHERIES SUBJECT TO AUTHORITY
OF FISHERY COUNCILS BY CALENDAR YEAR

New England Fishery Management Council

1987	$363,965,000
1988	339,938,000
1989	Data will be available in Spring 1990

Mid-Atlantic Fishery Management Council

1987	$ 68,923,000
1988	72,286,000
1989	Data will be available in Spring 1990

South Atlantic Fishery Management Council

1987	$ 19,471,000
1988	25,028,000
1989	Data will be available in Spring 1990

Caribbean Fishery Management Council

1986	$ 5,125,000
1987-88	Data will be available by December 1989
1989	Data will be available in Spring 1990

Gulf of Mexico Fishery Management Council

1987	$ 529,340,000
1988	483,598,000
1989	Data will be available in Spring 1990

Pacific Fishery Management Council

1987	$ 210,091,000
1988	241,535,000
1989	Data will be available in Spring 1990

North Pacific Fishery Management Council

1987	$ 799,700,000
1988	1,202,019,000
1989	Data will be available in Spring 1990

Western Pacific Fishery Management Council

1987	$ 8,428,508
1988	Data are not available at this time
1989	Data are not available at this time

Note: No value has been included for tuna fisheries which are excluded by the Magnuson Act from Council authority.

Q. 2b. Provide the funding provided to each Council for FY 1987 through FY 1989.

Q. 2c. Provide the funding that would be authorized for each Council for FY 1990 under the Administration's proposed budget.

A. President Bush does not have specific budget proposals in this area for FY 1990. These programs fall within the domestic discretionary category and will be determined through negotiations with Congress.

Council	1987	1988	1989
	Thousand Dollars		
New England	$1030	$930	$935
Mid-Atlantic	920	977	1023
South Atlantic	900	873	913
Caribbean	562	567	547
Gulf of Mexico	965	975	1010
Pacific	1155	1017	1014
North Pacific	1398	1166	1210
Western Pacific	770	728	733
Total	$7700	$7233	$7385*

* Includes a one-time, $150,000 carryover amount.

Q. 3. NOAA is reported to have twice rejected amendments to the coastal pelagic species plan that were proposed by the Gulf and South Atlantic Councils and would have banned the use of driftnets.

Q. 3a. Please provide details on that driftnet fishery, including the number of vessels involved, length and mesh size of nets, target species, length of season, and areas fished.

A. During 1987 there were thirteen vessels in the drift gillnet fishery, with each boat operated by a captain (not necessarily the owner) and carrying two or three crew members. Industry representatives have pointed out that, while the total number of vessels was 14, only 13 vessels actually fished during 1987. According to NMFS port agents, fleet size during 1988 did not exceed 13 vessels. Total number of fishermen in the fishery ranges between 39 and 52. These vessels and fishermen also fish in the run-around gillnet fishery for Gulf migratory group king mackerel, the Gulf and Atlantic migratory group Spanish mackerel, and the shark drift gillnet fishery. Periodically they fish smaller gillnet boats (outboards) in the Indian River and outside the inlets. As of September 1987, there was a total of approximately 34,500 yards (19.6 miles) of drift gillnet gear in the fishery (excluding two boats with unknown net length). If the estimated net lengths given in Table 2 are included, the total length of drift gillnet gear in the fishery is 38,800 yards (22 miles). At a cost of $5 to $6 per yard, the total investment in drift gillnet gear is between $194,000 and $232,800.

Q. 3b. Please provide details of what the Councils proposed and an explanation of NOAA's actions in response to the proposals.

A. The Gulf and South Atlantic Councils have attempted to prohibit net gear from the mackerel fisheries on several occasions. The Councils requested the Secretary to prohibit drift gillnets by emergency action based on conflict within the fishery. The Councils contended that "competition" as defined in the original fishery management plan is a form of conflict and, therefore, is an acceptable rationale for prohibiting this gear through the regulatory amendment process. The National Standard Guidelines state, however, that Councils are not required to prepare FMP's for each and every fishery -- only for those where regulations would serve some useful purpose and where the present or future benefits of regulations would justify the costs. The request for emergency action was rejected because the Council could not demonstrate that the action was necessary, particularly on an expedited basis without provision for public comment.

Using the regulatory amendment process, the South Atlantic Council attempted to reverse reported decreases in recreational and commercial hook-and-line catches south of the Ft. Pierce-Pt. Salerno area during 1986 and 1987, and to prevent further declines in the future. The Gulf Council concurred with this position. The Councils' regulatory amendment was disapproved by the National Marine Fisheries Service's Acting Southeast Regional Director with the following reasoning: (1) without first establishing that a user or gear conflict existed, the regulatory amendment process was not authorized, and (2) the record did not establish a user or gear conflict within this fishery. The NMFS Acting Regional Director stated that the problem appeared to be one of allocation among competing users rather than a user or gear conflict, and concluded that if the Councils desired to resolve a problem they believed was caused by drift gillnets, they should amend the plan.

This led to the development of Amendment 3 which, among other things, proposed the prohibition of purse seines and run-around gillnets for Atlantic King mackerel and drift gillnets in the coastal migratory pelagics fishery. Amendment 3 to the Fishery Management Plan for Coastal Migratory Pelagic Resources was partially approved by the Secretary of Commerce on June 16, 1989. The approved portion of the amendment will prohibit the use of drift gillnets in the Gulf migratory group king mackerel fishery and the Gulf and Atlantic migratory groups of Spanish mackerel. All three of these groups are overfished; the users of traditional gear (hook-and-line, and run-around gillnets) already take the entire commercial quota, resulting in early closures. The disapproved portion of the amendment would have prohibited purse seines and run-around gillnets for the Atlantic migratory group of king mackerel and drift gillnets for all of the managed coastal migratory pelagic species. Disapproval was based upon insufficient justification for the proposed actions, and non-compliance with the Magnuson Fishery Conservation and Management Act and other applicable law. Subsequent to the formal submission of Amendment 3, the 1989 Stock Assessment Panel determined that the Atlantic migratory group of king mackerel was not overfished, contrary to earlier reports. In addition, it was found that, absent the unusual environmental condition that contributed to last year's heavy commercial catch early in the season, catches were returning to more normal levels. The proposed increase in commercial allocations was not necessary; therefore, and continued use of net gear would not negatively impact traditional hook-and-line participants this year. Proper restriction, instead of prohibitions, on the net fishery would allow both hook-and-line and net fishermen to coexist.

Q. 3c. Please provide NOAA's plans, if any, for further actions relating to this fishery.

A. NOAA has advised the Councils that proper restrictions, instead of prohibitions, on the net fishery would allow both hook-and-line and net fishermen to coexist. The South Atlantic Council voted to revise and resubmit the amendment.

Senator KERRY. Thank you very much, Mr. Evans.

Mr. Borden.

STATEMENT OF DAVID V. D. BORDEN, CHAIRMAN, NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Mr. BORDEN. Chairman Kerry, members of the subcommittee:

Thank you for allowing me to appear before you today. I am here to speak on behalf of the eight Regional Fisheries Management Councils, and I would like to take this opportunity to address several issues and amendments to the Magnuson Act that are being proposed by the council chairmen, and to briefly mention other matters of particular concern to the New England council.

The council chairmen are recommending 14 amendments to the Magnuson Act. All are made with the sincere intent to improve the Act. They range from minor technical amendments that should not upset anyone to the inclusion of tuna, which we all know has and will continue to ignite emotions and controversy.

Attached to my testimony is a list of the amendments which are proposed, including a detailed justification for each position.

I have also included in my written statement subjects which represent items of special regional concern.

In the interest of time, I will focus my comments on several legislative actions which we feel warrant closer attention. These issues relate to funding, enforcement, and the issue of tuna.

In regards to funding problems, the council chairmen appreciate the difficult task before you in balancing the budget, but we feel that moderate increases in funding are necessary if we are to have an effective national fishery management program. Three aspects of the funding problem are of particular concern to the councils.

These relate to funding for NMFS, the U.S. Coast Guard, and the eight regional councils. It is our unanimous position that these programs should be funded at a level higher than the 1989 allocation. The council chairmen are requesting a modest increase in funding level to $8.7 million for all eight councils.

Since most councils have been level funded since 1980, we believe that this is a realistic figure.

We further believe that the funding level for the U.S. Coast Guard and for NOAA fisheries should be funded at the 1989 level or higher. It is particularly critical to the councils and to our success to maintain these agencies' services, since the regional council system relies heavily on the research, monitoring, analytical services, data collection, and enforcement activities that these agencies provide.

In regard to enforcement and compliance, all eight councils are experiencing problems with a low level of compliance with fishery regulations. These problems differ widely from area to area, but have as their root cause a low level of funding, inadequate staffing, and ever-changing agency priorities.

It is our view that the long-term success of our fishery management programs is intimately linked to the effective enforcement of our regulations. We therefore strongly urge the committee to closely examine the fundamental causes of this problem and implement changes to provide for an adequate level of compliance.

In regard to the tuna issue, the exclusion of highly migratory species from the Magnuson Act has created numerous problems for a majority of the councils. Since it is my understanding that the committee intends to schedule a specific hearing on this issue, I will limit my comments at this time.

The councils intend to submit a majority and a minority view on this item. The majority perspective, for the record, and I support this perspective, holds the position that the Section 102 exclusion for highly migratory species should be deleted from the Act.

In addition to the previously mentioned issues, the council chairmen have also identified specific problems which affect their particular jurisdictions. These problems vary from area to area, and many of them have been mentioned here today already.

I will just mention a few of them. They particularly relate to the interception of North American salmon by foreign driftnets, a lack of funding for data collection, which is a key component of our fishery management process, and procedural problems associated with FMP implementation. A detailed discussion is included in my written statement, and I would encourage you to read it.

Mr. Chairman, I will now offer a few brief comments on behalf of the New England council. The council has had mixed success in achieving the goals of our management plans for our most important species.

I am pleased to report that the goals of our lobster management program are being fully implemented. This is being done in concert with the major lobster-producing states. We have in fact instituted a lobster gauge increase, which should protect the biological viability of this important resource.

In regards to Atlantic sea scallops, the high abundance of Atlantic sea scallops in the New England area is expected to continue over the next several years. The council is working closely with the scallop industry to develop alternatives to the current count system, which has proven burdensome to the industry and has been difficult to implement and enforce.

We do have problems in the New England area. Problems persist in the multi-species fishery, although there are some reasons for cautious optimism. As has been well publicized, resource abundance of cod, haddock, and yellowtail and several other major groundfish species is at an historic low level.

The council is convinced that inadequate enforcement in the Northeast has resulted in a low level of compliance and has been a major factor contributing to these population declines. The council has been extremely vocal and active in seeking the enforcement and support necessary to effectively implement our management programs.

As a partial result of actions of the New England council, the U.S. Coast Guard has recently upgraded the priority for fisheries enforcement. Although it is too early to evaluate the impact of this change, our council views this as a very positive development. It should pay benefits over the long term.

It is my intent to submit to the subcommittee a detailed review of the efforts made by our council to address the enforcement and compliance problem in the Northeast, and I would strongly encourage the subcommittee to fully examine this issue.

Thank you very much for the opportunity to address the committee. I will be happy to answer any questions.

[The statement follows:]

[illegible] 15 1989

TESTIMONY OF DAVID V. D. BORDEN, CHAIRMAN
NEW ENGLAND FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
AND THE SUBCOMMITTEE ON NATIONAL OCEAN POLICY STUDY
MAY 17, 1989

Senator Kerry and members of the Committee, thank you for allowing me to appear before you today. My name is David Borden and I am Chairman of the New England Fishery Management Council. I would like to take this opportunity on behalf of the eight Council Chairmen to address several amendments to the Magnuson Act that we are proposing and to mention briefly other matters of concern to the Councils.

Over the past two years, the Council Chairmen have met and interacted on a more frequent basis. This increased interaction initially resulted from the need to collectively react to the Secretary's then developing Regulations and Guidelines that affect all aspects of Council operation. Most recently, this forum has served as a deliberative process in formulating the recommendations that will be presented today. There has been a significant amount of effort from all concerned in developing these recommendations, and as you might well imagine, all the Chairmen do not agree on all the issues. Also, though we as Chairmen have acted with the advice and knowledge of our respective Councils, the testimony I am presenting today is that of the Council Chairmen.

We recommend fourteen amendments to the MFCMA. All are made with the sincere intent to improve the Act by the Chairmen supporting them. They range from minor technical amendments that should not upset anyone to the inclusion of tuna, which we all know has and will continue to ignite emotions and controversy. Attached to my testimony is a list of the amendments being proposed.

NOAA FISHERIES BUDGET

Before addressing our recommendations for amendments to the MFCMA, I would like to comment on the proposed NOAA Fisheries FY 1990 budget. As you are aware, the Councils and all participants in the management of fisheries under the Magnuson Act are largely dependent on NOAA Fisheries programs to provide management data; basic research on and monitoring of the fisheries; enforcement; and technical support in processing management actions. All of these areas of responsibility are critical to proper management of the nation's fishery resources, and yet support in these areas has been continually declining as a result of budgets that are annually reduced in terms of real dollars. We believe the current NOAA budget proposed by the Administration does not make the necessary commitment to manage and conserve our fisheries resources and if funded at the requested level would essentially make effective fisheries management impossible.

At a minimum, we support a NOAA Fisheries budget equal to the FY 1989 level. We believe it should be much higher, but appreciating the difficult task before you in balancing the budget, we hope you will authorize a level that provides for moderate increases in critical areas. Two critical areas of concern that should receive increased funding are fisheries data collection and law enforcement. These perhaps represent the weakest links in the Magnuson Act fisheries management process. Without accurate fisheries data for the Councils to use as a basis for their management decisions and adequate law enforcement to ensure those decisions are carried through, the whole management system is doomed to failure.

Mr. Brennan has indicated to us in the past that fisheries management under the MFCMA will be one of the highest priorities of his agency; therefore, we feel that if adequate funding is made available, he will ensure this priority is effectively realized. Considering the tremendous value of our commercial and recreational fisheries to the local and national economies, we believe sufficient funding to properly manage these renewable resources should be a high national priority and strongly recommend NOAA Fisheries be adequately funded to accomplish their fisheries management mission.

FISHERY MANAGEMENT COUNCIL FUNDING

Historically, funds appropriated by Congress to manage our fishery resources under the MFCMA have been used by the Councils to meet their programmatic and administrative needs. In FY 1978, programmatic funding made up approximately 27% of the Councils total budgets. These programmatic funds were used by the Councils primarily to collect management information, through short-term studies in cooperation with state agencies and universities, that NOAA Fisheries was unable to obtain because of shortfalls in funding and manpower or lack of expertise or ability to collect. Since FY 1980, the MFCMA has been relatively level funded, while over the same time period the Councils' management responsibilities have increased greatly. To compensate for this increase in Council management activity, and corresponding increase in dollars needed to operate, the Councils have had to use more of their funding resources in the administrative area. This has resulted in no programmatic funding in the Councils FY 1989 budgets. We have now reached the point where using programmatic dollars to meet administrative needs is no longer an alternative. Council programmatic funds are nonexistent.

These basically static budget years have significantly affected the operations of the Councils. All Councils have had to adjust their activities in one way or another by reducing the number of Council meetings and/or number of committee meetings held between Council meetings, reducing the number of public hearings for each amendment and generally affecting public involvement by holding multiple meetings in the most cost-effective locations, etc. In many instances, Councils have reduced staff or filled vacancies with less experienced (i.e. less expensive) personnel. We have now reached the point of having to postpone development of needed fishery management plans (FMPs). The reduced funding levels have affected the efficiency and effectiveness of all our operations.

The Councils' fishery management responsibilities under the MFCMA continue to grow as does our need for additional funding to meet those responsibilities. However, the Council Chairmen are very much aware of the constraints on Congress in its efforts to achieve a balanced budget. We, therefore, are requesting what we consider to be a modest and reasonable increase, a funding level of 8.7 million dollars for the eight Councils. This represents the total dollars requested by all the Councils for the 1989 funding year and is a realistic estimate of what is needed at a minimum to carry out most of our responsibilities under the MFCMA.

RECOMMENDATIONS FOR AMENDMENTS TO THE ACT

1-The first recommendation for amending the MFCMA is to add a new Purpose to the Act to eliminate high seas interceptions of U.S. salmon and steelhead. The high seas interception of North American salmon by driftnet fleets from Taiwan, Korea and Japan is perhaps the most explosive issue now facing North Pacific fisheries. Fishermen all along the Pacific Coast have voiced outrage over these interceptions, especially since returning salmon runs were so disappointing last year. This issue has received national press coverage and the attention of environmentalists, all deploring the continued use of miles-long driftnets that indiscriminately catch and kill everything from fish, to marine mammals, to sea birds, often breaking loose but continuing to ghost fish and to be hazards to navigation.

The North Pacific Council has urged the Departments of Commerce and State to take immediate action to control the foreign fleets that are capturing our salmon. We urgently need to find a solution to this problem and are requesting your help to strengthen the Magnuson Act by adding to Section 2 this new Purpose to eliminate high seas salmon and steelhead interceptions.

2-One issue I will touch on only briefly at this time is the recommendation by the majority of the Council Chairmen that SECTION 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES be amended or deleted to the effect that tuna are no longer an exempted species. The Council Chairmen's majority and minority positions on this issue will be presented at the Committee hearing that we understand will be scheduled to specifically address tuna.

3-The Council Chairmen are recommending that SECTION 201. FOREIGN FISHING be amended to delete language on the alternate method of establishing Total Allowable Level of Foreign Fishing (TALFF) and the Act be amended to ensure that establishment and release of TALFF provide benefits to the U.S. fishing industry and the nation. Section 201(d) was earlier amended to create what has now become a complicated process for decreasing the TALFF for a particular species. It was an early attempt to get around the interpretation of the arithmetic in the original MFCMA (TALFF = OY - DAH) coupled with fishery management plans that required amendments to set annual quotas. To the best of our knowledge, the provision was used only once, for butterfish.

The current generation of Fishery Management Plans (FMPs) makes the Annual Fishing Level provision of 201(d) unnecessary. Given the current version of the MFCMA and the concept of framework FMPs, there is greater flexibility in specifying the various quantities (Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and TALFF). The concept of Allowable or Acceptable Biological Catch (ABC) has also been introduced. Additionally, establishing the specifications annually is generally a matter of a proposed rulemaking or a notice of action. In light of these evolutionary measures, portions of Section 201 are no longer needed.

4-The majority of the Chairmen also recommend that SECTION 204. PERMITS FOR FOREIGN FISHING be reviewed to revise the formula by which foreign fishing fees are calculated in order to eliminate the inclusion of the amounts of fish harvested in the territorial sea, shellfish and the recreational fishery from the formula; and to further review Section 204(b)(10)(F) to reconsider the purpose for which foreign fees are placed in escrow.

The current formula includes recreational catch and shellfish catch; hence it lacks equity.

Excluding the territorial sea, recreational and shellfish fisheries will increase base revenue by about 30%. This would raise the fees to foreign nations to more closely approximate the actual cost of having them fish in our EEZ. The fees collected could provide funding for NOAA Fisheries to fulfill their legislated fisheries mandates.

It is further recommended that in view of the fact that the NOAA Fisheries budget is subjected to continued statutory reductions, all fishing fees collected be dedicated to support the responsibilities of NOAA Fisheries and their activities in their support of the MFCMA, including research, data gathering and enforcement.

5-Until January of this year, an obligatory seat was provided by federal regulation under 50 CFR Part 601. Last fall, NOAA Fisheries proposed in draft regulation, the elimination of the obligatory seat provided by federal regulation since 1977. Their rationale was that this provided more discretion to the Secretary in appointing members. All of the Councils and many state Governors opposed their proposed revision. In the final 601 regulation published this January, NOAA Fisheries revised their position only to the extent that the member selected would be from persons nominated by the Governor of that state for both the state seat and any other at-large seat currently held by another state.

The Councils feel that the obligatory seat should be maintained and that this is consistent with the legislative intent since the Senate version the Magnuson Act made all seats obligatory. The success of most of our plans is dependent on cooperative action by the states in implementing compatible rules in their jurisdictions. Therefore, we believe the Governors should be able to nominate three or more persons to an obligatory seat representing that state.

6-We recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS subsection (d) be amended to allow Council staff members to be eligible for reimbursement for actual expenses incurred during the course of Council business. Staff members use the same types of transportation and facilities as Council members and, as a result, incur similar travel-related expenses. Staff reimbursement for these types of expenses should reflect this.

7-The Chairmen recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS, subsection (j) be amended to allow that fishery management plans and amendments no longer be subject to the National Environmental Policy Act (NEPA). NEPA was enacted to ensure that adequate consideration be given to federal actions that might affect the environment. Fishery management activities, by their nature, conserve living marine resources for the long-term benefit to society. The most recent amendments to the Magnuson Act have enhanced the Councils ability to address environmental issues that affect fisheries habitat and as you will hear later in my testimony, the Council Chairmen support further strengthening of the Act in this area.

In addition, each fishery management plan or amendment now prepared is very similar to an Environmental Impact Statement (EIS). The majority of the Council Chairmen feel the preparation of an EIS as required by NEPA is therefore duplicative and unnecessary. Removing this requirement would eliminate some procedural hurdles that slow the plan and amendment process and allow the Councils to use their limited resources in more productive ways.

8-The Chairmen have discussed the Paperwork Reduction Act during past meetings and all agree that the PRA is a major impediment in the Councils efforts to obtain the best data available with which to manage our marine fisheries. The Councils are now caught in a double squeeze between our data needs which affect our ability to prepare fishery management plans and amendments in accordance with the MFCMA and NOAA Rules and Guidelines. This squeeze occurs due to the combined effects of a mandated percentage decrease in paperwork (data acquisition) by government agencies and the continually reduced budget for data collection and analysis by NOAA. This translates into a severe decline in our ability to obtain fisheries data, and is adversely affecting the quality of fishery management plans and the ability of the Councils to properly manage our fishery resources.

We request that Section 302 (j) of the MFCMA be amended to provide that vessel log books and processor/dealer reports required by fishery management plans and amendments be exempted from the Paperwork Reduction Act. The MFCMA is presently a data poor management system and if the Councils are to keep faith with the public by allowing participation as required under the MFCMA, our ability to collect the best information available to perform the required management analysis must be improved. In many instances, the Councils and the management system are criticized by the fishing industry because of an inability to collect data the industry has available and would willingly provide. Amending this Section to provide that vessel logbooks and processor/dealer reports required by an FMP be exempted from the PRA will greatly improve the situation and is one of the least expensive forms of data collection.

9-The Council Chairmen further recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS subsection (j)(3)(A)(ii) be amended by adding language to clarify

Council requirements necessary to hold closed meetings and the announcement of such meetings through newspapers. This will allow Councils to close meetings on an ad hoc basis if unforeseen administrative or personnel matters arise that may require closure of a meeting to protect individual rights to privacy. This would only apply to meetings that do not affect the Council management decision process.

10-Another amendment recommendation I will address deals with Section 303 (e) DATA COLLECTION PROGRAMS to allow for the collection of the data that is mandated in Section 303 (a). The confidentiality of statistics Section 303 (d) was amended in 1986 to provide Council staff access to needed data. However, Section 303 (e) was not amended at that time to provide for the collection of confidential data under a 303 (e) request. We believe the retention of the present Section 303 (e)(2) language during the 1986 amendments was an oversight. Currently, the requirements in Section 303 (a)(5) cannot be met because of restrictions imposed under Section 303 (e). To fully comply with this Section 303 (a), Section 303 (e) must be amended.

11-The Councils are requesting that a new subsection be inserted into Section 304 that would provide that regulatory amendments be processed within the same statutory time periods as plans or amendments. Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP amendments, but this mechanism has not worked in many instances. Regulatory amendments have no mandatory schedule for review and approval and are not always processed expeditiously. As an example, one Gulf Council regulatory amendment required almost three years for implementation. Other Councils have experienced the same delays with regulatory amendments. NOAA Fisheries has encouraged the Councils to include framework measures within their FMPs to allow for modifying plans without having to amend the FMP. Many such framework measures are implemented by regulatory amendment. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and are not processed expeditiously, thereby creating significant management problems. Delay generally occurs at review levels above NOAA Fisheries. The inclusion of regulatory amendments in Section 304 would in no way prevent them from being processed and approved more rapidly than FMPs, however it does ensure they will be processed in a timely manner.

12-Another issue of paramount importance to the Councils is the growing lack of information on which to base sound management decisions. With the phasing out of foreign observer programs, we no longer have adequate information coming in from the fishing grounds to monitor the fisheries and implement effective management measures. For example this past January the North Pacific Council went on record declaring that the lack of observer data for domestic fisheries was preventing the Council from meeting its obligations under the Magnuson Act. The Council urgently petitioned the Secretary of Commerce to direct NOAA Fisheries to prepare and implement an observer program and provide the funding necessary to correct this deficiency as rapidly as possible. All of the Councils have experienced situations where lack of data has negatively impacted their ability to meet the mandates of the MFCMA, and occurrences of this nature are becoming more frequent.

Unfortunately, federal funding seems to be drying up and these critical data needs will go unmet unless other sources can be tapped. To the fishing industry's great credit, there seems to be growing support to recover the costs of data gathering, observer, and perhaps other programs from the users of the resource. This proposal would remove the current limitation in the Act that fees not exceed administrative costs, and add a discretionary provision to fishery management plans to allow the Councils to establish regional cost recovery programs to fund such urgent needs as observer coverage and data gathering.

13-The Council Chairmen suggest an amendment to the Act to require that upon written request by a Council, the Secretary will provide within thirty days a written legal opinion as to whether a measure or regulation under consideration by the Council is consistent with the Act and other applicable law and regulations. In the past, the Councils have experienced difficulties in obtaining definitive legal opinions from NOAA General Counsel concerning management measures or regulations under consideration. In some instances, NOAA General Counsel has refused to provide specific legal opinions to the Councils. In other cases, legal opinions provided at the regional level early in the FMP or amendment process have been reversed at the Washington level during FMP review. This has led to wasted Council time and effort and has frustrated management efforts.

14-The Council Chairmen unanimously recommend that Congress strengthen our collective ability to influence actions which will restore, maintain and protect fishery habitat. The Magnuson Act was amended by P.L. 99-659 to allow for Council comments on any activity by a state or federal agency which may impact fisheries habitat, and to require that Council Fishery Management Plans include information on habitat. These were very useful amendments which gave the Councils their first entree into habitat issues affecting ocean fisheries. Habitat degradation and pollution have been and continue to be significant problems affecting marine and anadromous fishery resources. Wetlands continue to be lost or degraded at alarming rates, coastal pollution is increasing, and the freshwater habitat of anadromous fish is being adversely affected. We recommend that existing laws and authorities be used to the fullest extent to halt further aquatic habitat degradation and, where appropriate, that legislation be strengthened to assure that existing habitat is protected.

The Magnuson Act should be amended to reflect Congressional policy or intent with regard to habitat protection. This will strengthen the Councils' recommendations to federal agencies implementing actions which adversely affect ocean fisheries. The Councils are guided by a policy of no net loss of the productive capacity of marine, estuarine and freshwater habitats which sustain commercial, recreational and native fisheries. With your help, we will continue to monitor and comment on proposed actions which impact fishery resources and will hopefully improve our ability to implement this policy. We believe that ecosystem health is the key measure of success in controlling pollution and habitat impacts, and the habitat requirements of fish and shellfish should be given top priority in any decision which impact them.

Mr. Chairman, in closing I would like to again briefly mention two areas the Council Chairmen believe have proven to be the greatest impediments in making the MFCMA work as envisioned by Congress. They are the lack of good fisheries data (scientific and economic) on which to base our management decisions and lack of law enforcement with which to ensure that management decisions are carried out.

Thank you.

Senator KERRY. Thank you very much, Mr. Borden.

Let me just say today that the subcommittee will look very carefully and does take very seriously the recommendations that are made by all parties with respect to this matter.

We have already incorporated into draft legislation some of the amendments that you have set forth. Today, I am introducing a bill to reauthorize the Magnuson Act that will beef up enforcement and research, which I know people are deeply concerned about. There are some other controversial areas that we are still examining, and we will continue to do that.

What I would like to do now is open the questioning. We will focus initially on the larger issues. Mr. Borden, we will ask you to provide a broad council perspective. When we discuss some of the New England issues we will bring you back for that.

Let me begin by asking you, Secretary Evans. There is a theme throughout your testimony about the need for better management, and I think the second theme is better law enforcement, correct?

Mr. EVANS. Yes, sir.

Senator KERRY. Now, those two themes, better management decisions, i.e., you want to be able to make better decisions, you need better data, correct?

Mr. EVANS. That is correct, sir.

Senator KERRY. Well, how can you do that, given what we know has been the record of funding? And we go through this game every year and we are back again. The President proposes to reduce program support and Congress must restore what you folks call stable funding, which is in effect a cut because of inflation, new demands placed on you, and so forth.

So where are we going? The bottom question I want to ask you is, did you request funding increases of OMB?

Mr. EVANS. Yes, sir.

Senator KERRY. And what level of increase did you ask for?

Mr. EVANS. I do not know the exact level for fisheries that was submitted for the 1990 budget, but I know that there was an increase that came from NOAA to the Department of Commerce. From the Department of Commerce, the level was higher to OMB than what was in the President's budget.

Senator KERRY. And is it your perception as Administrator that an increase is essential to the proper performance of the large responsibilities that have been placed on the agency?

Mr. EVANS. Well, being a good Administration soldier, I can say that the funds that we requested were adequate for us to accomplish the job. We would not have submitted the proposal we did if we did not feel it was for the resources that were necessary to do the job as we see it mandated.

Senator KERRY. I think we are talking about two different things. The level you requested of OMB was what you felt you needed to do the job?

Mr. EVANS. Yes, sir.

Senator KERRY. That is not what you got.

Mr. EVANS. No, sir.

Senator KERRY. And what I am saying is, can you do the job with what they have given you?

Mr. **Evans**. Yes sir, we can, but not at the same level. As has been mentioned by a number of people, through good management, high quality people, and a lot of extra hard work, the things that I read in my testimony in terms of what has been accomplished over ten years versus what has been accomplished over the last three years indicate that we certainly have been very active.

We could have done more in some areas than we have, and we certainly could have done more in the enforcement area.

I just got back from Galveston, Texas, and we have little or no enforcement there.

Senator **Kerry**. I have got to tell you that I am having trouble with this. You have no enforcement in Texas, you have problems with enforcement in the Pacific that we are all aware of, and you do not have adequate data collection.

We have demands by all concerned for better management information, increased data collection, and so forth. In addition, we know what we need to do in terms of some of the climate change issues and NOAA research in that area at this point.

I fail to understand. I mean, I know it is good to be a good Administration soldier, but is there not a point where federal responsibility and citizen demands require that the language not be quite so George Orwellian?

Mr. **Evans**. Yes, sir, I think that is probably a very good point.

Mr. Chairman, those problems that you have just mentioned and the level of funding and a number of other issues that you raised in your opening statement are something that I am currently in discussion with Secretary Mosbacher about. We have discussed this.

I think that—I cannot say for sure and I am certainly not in a position, since I am not staying on——

Senator **Kerry**. I understand that. Well, that may free you a little bit to be willing to make clear to them what the choices are here. I mean, I want the President to succeed. I think we all do.

Mr. **Evans**. Well, the choices are that more resources are going to have to be put into fisheries management and enforcement if we are going to do the things we are mandated and solve some of the problems. It is the same issue that came up when we were discussing all of the things that you mentioned in terms of estuaries and habitat and global climate, global warming. All of these things have been initiatives.

There is a $12.4 million initiative that did get into the Administration's budget which we call the coastal ocean initiative. But what does it really address? It addresses fisheries recruitment; it addresses a number of fisheries issues. That was the way of getting an increase to address some of those very serious problems.

They are there, and I think the Administration is well aware that they are there, and I certainly have not kept it any secret.

Senator **Kerry**. The Administration is proposing the establishment of a marine fishing user fee dedicated to underwriting the funding for some of these important marine program activities. Have you got an estimate of the total those fees might generate?

Mr. **Evans**. I would be giving you a rough guess, but we are talking $60 million-plus dollars.

Senator **Kerry**. And what would happen to the money that is collected?

That amount that exceeds the administrative costs?

Mr. **Evans**. It would go into a number of the programs that we talked about, collecting more data, some of it into enforcement, some of it into data management and resource management, mostly establishing a good data base, which is, I think, of vital importance. It is something that cannot be underestimated.

We cannot really handle some of these things unless we have good data, and I think that is driving the need for an observer program, a good observer program.

Senator **Kerry**. Where does the salt water program license the President is talking about come into that? Is that structured in?

Mr. **Evans**. It is structured into that. It was a part. It is a contingency that was added in.

Senator **Kerry**. When do you expect that proposal to come forward?

Mr. **Evans**. It is over at OMB now. I believe it may have just come back. It should be shortly, within a matter of the next week or so.

Senator **Kerry**. Now, the Secretary of Commerce has to make a decision about the Japanese agreement on the driftnet monitoring. What recommendation will you make to him regarding the driftnet agreement?

Mr. **Evans**. Well, the recommendation that I will be discussing with him, since it is certainly his decision—I have a meeting with him either this afternoon or tomorrow—is pretty much the same as the recommendation that is coming from this group—Senator Gorton, Senator Stevens.

I think there are a lot of questions about it. It gives us very little of what we asked for. Although it does not give the Japanese anything that they asked for, it gives us very little. I feel it falls way short of the mark, and that is what I will tell the Secretary of Commerce this afternoon.

Senator **Kerry**. Good.

Senator Stevens.

Senator **Stevens**. Well, I have been absent. I would be glad to yield.

Senator **Kerry**. Senator Gorton.

Senator **Gorton**. You have just answered my first question, Mr. Evans. The natural follow-up question to that would be, what is your impression of the views within the Department in connection with this agreement?

Can you give us any insight into what his response is likely to be, given the response, the reaction that you have heard here from Senator Stevens, Senator Packwood, and myself, either from our respective letters or from the resolution which Senator Stevens has introduced and which I suspect we could probably get passed?

Mr. **Evans**. My general feeling from what I understand, from what I have heard, is that the Secretary was very responsive to the concerns that were put forth by members of this committee's staff when they had an opportunity to talk to him.

He also is very much aware of the general feeling of not only this committee, but other members of Congress, governors, people that are the constituents. I do not know how many letters in favor, other than the State Department, he has. I think the one pile is this big [indicating] and the other one is like that [indicating].

So I think that will probably influence him. He has stated that he is interested in our having a fair and equitable program, and he is going to be making the judgment based on the merits of the agreement, just as he has in other agreements that have been very controversial with Japan.

Senator GORTON. That is a most encouraging response.

Let me ask you, what do you know, if anything, with respect to parallel negotiations with South Korea and the Republic of China?

Mr. EVANS. The last briefing I had, which was well over two weeks ago, was that we have gotten nowhere. We have made absolutely no progress with Taiwan or with Korea.

Senator GORTON. June 29th is coming right up, is it not?

Mr. EVANS. Yes, sir.

Senator GORTON. Do you have any recommendations which you will make with respect to what the American response should be to any of those three nations if there is no agreement on June 29th?

Mr. EVANS. That they be certified and that recommendations for possible sanctions be sent forth.

Senator GORTON. Okay, let us go into that. Recommendations for possible sanctions.

Mr. EVANS. That would include the International Trade Administration and others. And it is not only within the Department of Commerce. I cannot unilaterally from NOAA go across and do that. There are a lot of other players in that. I am sure you are much more aware of that than I am.

Senator GORTON. Would you be willing to give us your own view on what kind of sanctions should be recommended?

Mr. EVANS. We recommended some trade sanctions which came from the International Trade Administration concerning the International Whaling Commission, and I think that what has happened now is that I probably would be just purely guessing as to what the sanctions would be in terms of imports. As you know, we have a rather major positive fisheries trade thing balance with Japan.

There are a number of different items that could be done. But we are coming up on two things: one, the whaling issue, as well as on this issue. And I would rather not at this time address that specifically and show my hole card, if you would, because this is a public forum and we are going to be negotiating with the Japanese shortly. The International Whaling Commission starts here within another week, in San Diego. I will be the U.S. Commissioner, and would like to go in with as much bargaining power as I can to try to get Japan to back away from whaling.

Senator GORTON. That is an understandable reaction on your part. I am sure you will also understand the firmness and the strong emotion with which Senator Stevens and I and Senator Packwood and members of Congress from our states regard this issue and the way in which it affects the lives and livelihood of so many of our people, and our real unhappiness, which seems to be continuing, with the way in which the State Department seems to be unwilling to negotiate decisively.

I want to thank you for your comments here. But if I can impress on you any one subject, it is that a wide range, a large number of members here in both houses of Congress feel very strongly about this issue, and we certainly hope that you will communicate those views as forcefully as you possibly can to your superiors and to others who have authority in the executive department over making these decisions.

Mr. **Evans**. I can assure you, Senator, that Secretary Mosbacher has heard those messages. I certainly have.

Senator **Gorton**. Thank you, Mr. Chairman.

Senator **Kerry**. Thank you, Senator Gorton.

Senator Stevens.

Senator **Stevens**. Thank you very much.

I am sorry to have not been here, Mr. Evans, and I do not want to prolong this, so let me just state this and ask you a question.

I think our problem with the Japanese is that we perceive a total insensitivity to the environmental concerns of the rest of the world regarding the oceans. I have viewed the driftnet legislation that we passed as primarily being targeted at those environmental concerns. They do have an incidental impact on fisheries, but the primary concern is the reproductive capability of the total ocean aquasystem.

And Senator Gorton and I are particularly concerned with the North Pacific, and we share that North Pacific with the Japanese.

Time after time after time now over the last 20 years, they have just ignored these concerns. And we feel that the results of those negotiations coming back on the driftnet legislation again reflect that total insensitivity.

My question to you is, have you examined this from the basis of a broadbased concern including whaling, driftnets, the overall environmental concerns that are expressed throughout our country for the oceans in general and the North Pacific in particular?

Have we tried to put these all together and negotiate with them?

Mr. **Evans**. Yes, sir, not necessarily in negotiations themselves, but in consulting about the whaling and other issues. Japan, in consultations, does not have a tendency to separate these things. They sort of have them all put together.

I have raised the issue. The answer that I get back is that it is a cultural difference, their perception of the environment and how you use the environment is different from ours, and therefore, since I am trying to force our views on them, I am being racist.

That is the sort of response I have gotten. I do not know how you respond to that other than continuing to negotiate. That is a general overtone that has been in a lot of our discussions with Japan.

I think the comment to be made is that, if you look at how they respond to it, certainly, in appearance and the way we look at it, is a complete disregard for the fact that the system can collapse and it is a very complicated one, and it is really quite different.

It is a very frustrating thing in the whaling discussions as well as the discussions having to do with the North Pacific fishery.

Senator **Stevens**. Mr. Evans, the way we look at it is that, having been denied the incidental catch from their vessels that used to invade our 200-mile limit, they have restructured their driftnet fleet so that it poses an even greater threat to the immature species of halibut, salmon, and other fisheries of the North Pacific; and that their desire is to harvest those species, not totally to harvest squid. They do not need all those vessels to harvest squid.

And as such, they are flaunting their rights on the high seas to destroy the environmental objectives, I think, of everyone who is concerned with the future of the oceans in terms of the reproductive capability of those fisheries.

They still have access to those fisheries. They have got lots of money. They can buy those species cheaper than they can fish for them with that high seas squid fleet. But they persist in doing it because they think it is their basic right to ignore the environmental concerns of the world.

Now, somehow or other we have to bring that home to them, and I do not know how to do it unless we get them all in one basket and stop letting them treat halibut separate from squid and squid separate from salmon and salmon as different, separate from whales.

The concern in my opinion is a general United States concern for the total ecosystem, and they are unwilling to accept that. Yet we play into their game by letting them discuss them one at a time. I urge you to try and put them back together.

Mr. EVANS. Yes, I think that I was very sympathetic to Senator Murkowski's suggestion. You may remember the letter when he was there talking with them about not only this issue, but the whaling issue, that some of these things should be coupled together. And that is one thing that we certainly are giving some consideration to and I will be discussing with Secretary Mosbacher.

Senator STEVENS. Well now, let me hasten to get back in. I was only going to ask one question. I was going to raise the fisheries issue on the floor at the time we were considering the FSX, but we abhor linking fisheries issues and oceans issues to the general problems of trade.

We want to keep them separate. And had we brought that issue up at the same time, we would have faced a problem of trading off FSX for fisheries, and we do not ever think we are going to get to the place where we can trade fisheries for FSX. So we have got to keep them separate, and I urge you to keep them separate.

Thank you.

Senator KERRY. That is an important comment, Senator Stevens. And I think that the point you make about Japan's unwillingness to try to deal with this, as the U.S. and other nations have, cannot be underscored enough.

And I must say this Senator, while you want to keep these issues separate, I certainly found the Japanese attitude about FSX and other matters involving trade deeply intertwined in the overall attitudinal posture. Clearly, you are never going to trade one for the other. However, I think there is growing concern—and I sense it sitting on the Banking Committee, where we are talking about financial services.

For example, the banking industry and financial services cannot do the same things over there they can do over here, and you cannot move ATM's. You can go through a long, long, long, long list of U.S. concerns that have met with similar inattentiveness. I sense an attitude that they somehow are entitled to act differently with respect to these matters.

I think there is a growing frustration in this body that is going to be manifested. It was not in the FSX vote, for reasons that have little to do with how people really felt about the issue. And in the future I would sense that it is going to change.

I know that the Secretary was very much involved in the FSX and in the right place from my perspective. But I think that on these matters we have got to get a lot tougher.

Senator Breaux.

Senator **Breaux**. Thank you, Mr. Chairman.

Maybe the Japanese could use the FSX to observe and patrol their long-line fishermen.

Mr. **Evans**. That is a pretty good proposal.

Senator **Breaux**. Bill, has your successor been named?

Mr. **Evans**. Not that I know of. It has not been officially announced, no.

Senator **Breaux**. Well, we are glad to have you before the committee, and we have enjoyed our time that we spent with you over the years. You have done a good job in the various positions and posts that you have held. I am delighted that you are back again today.

First, I wanted to talk about resource allocation decisions just a little bit. In your testimony on page 4 you mention that allocation decisions among competing groups will require a lot more work and better resources. You state that allocation decisions need to be documented to show that they are equitable, legal, and in the national interest.

The Magnuson Act's national standards also provide requirements for allocation decisions. One is that they are fair and equitable among all fishermen. What does that mean and how are you enforcing it to ensure that, if there is a limited amount of fish, that recreational fishermen and commercial fishermen are being treated fairly and equitably?

Mr. **Evans**. I believe that—and I will defend this decision—what we have done is laid the burden for doing that on the regional councils and hope they are responding to that issue. And then we are looking at it as it is sent back to Washington.

The reason for that is, I believe, the intent of the Act was to have the regional councils, with scientific help from us, manage the fisheries. And it was my sense when I came on board that that was not happening, and so we have tried very hard to work closely with the councils, even in some cases where we may not have agreed.

I think the councils for the most part have done a reasonably good job in balancing out. You will find that a number of people, in some cases, in the commercial side will not agree with this and some people in the recreational side will not agree with this.

But I think for the most part this really has worked well.

Senator **Breaux**. That is the right answer and I am glad you responded in that direction. Basically you are telling me that the Federal government relies on the work of the councils.

Now, I am getting an increasing amount of information pointing to the fact that the councils themselves are not very well balanced.

I remember back in the seventies when we amended the law to say that the people who serve on the councils should be knowledgeable and have experience in the fishery industry.

I thought at that time what we were doing was getting away from the political appointees and someone who was just helping his brother-in-law get on the council because he owed him a favor. We wanted people who were knowledgeable and experienced.

I also would like to have people who have balanced viewpoints. And the information—and I want you to comment on it—that we are getting is that is not happening. Currently, only six of the non-Federal voting members of the Gulf of Mexico fishery management council and two, or 16 percent, of the non-Federal members of the South Atlantic council legitimately represent any seafood or commercial fish industry.

These statistics are deeply disturbing to me. I know we will have testimony tomorrow from the Gulf council, and I guess South Atlantic as well. In addition, Bob Jones will speak on behalf of the Southeastern Fisheries Association, saying that since he left the council there has not been one commercial representative appointed to the Gulf council from Florida, and on the South Atlantic side there has not been a single commercial fishing representative from Florida since 1981.

He points out that the appointment process has become so politicized that in many instances the White House has to sign off before a person is selected. He also points out, maybe along the lines of what you are saying about leaving the decisions on allocations to the council, that NOAA in recent times has evidently taken the position that whatever the council wished to do as far as allocation among users is concerned, is perfectly all right with them.

Now, do we not have a problem with the balance and the makeup of the councils in your opinion as to the interests they represent? I would like your people to go back and specifically to look at the Gulf council, and look at the people who serve on the Gulf council, and provide me information as to where are they coming from.

Do you think that the council memberships are getting out of balance as far as representing the legitimate commercial and legitimate recreational interests?

Mr. Evans. I think that in some areas that is probably very true.

Senator Breaux. How do we correct that?

Mr. Evans. You correct that by working with the governors and the people who are recommending the people, if you get the people on a list. The other thing is counting how many people you have representing those groups and trying to find people who have the balance that you are talking about.

I feel you are very balanced in your view. So am I. But a lot of people are not.

Senator Breaux. How about an additional requirement in the statute? I thought we had solved the problem when we required a fair apportionment of council members. And we were trying to prevent people who did not know anything about fisheries at all from being appointed to the councils just because they were friends of the governor.

So what we did was state, all right, you have got to be knowledgeable and experienced in fisheries. And that took care of that problem.

What about a requirement that the council's makeup should be balanced? I mean, let us face it, we can talk esoterically in Washington, but you have got groups coming from big game fishing clubs, and every now and then you get someone from some boat company or some fishing icehouse down there.

But the direction that it is going is frightening. The Gulf is, I think, really very unbalanced as far as the representation of commercial versus recreational. They both should be represented, but not to the detriment of others.

I am not arguing with you, Bill. However, you cannot say that those people are not reflecting where they come from, because they are. Is that not basically correct?

Mr. **Evans**. That is correct.

Senator **Breaux**. What about an amendment to the Act that states that in selecting these people there is a requirement that they be knowledgeable and experienced, and the council makeup reflects a balance between commercial and recreational interests?

Would that be helpful?

Mr. **Evans**. I cannot speak for the administration, but for myself I think it would be. I am sort of hedging, Senator Breaux, a little bit on the Gulf of Mexico issues because shortly that could become a conflict of interest for me, because I am going to be in the Gulf.

Senator **Breaux**. Which group are you going to represent?

Mr. **Evans**. The balanced side.

No, I will be in Texas in the next few months, and so I will continue to be very interested in it down there. And I would like to talk to you personally about some of these.

Senator **Breaux**. But right now when the people up here get the nominees from the states serving on the council, there is nothing in the statute that really ensures that the council is balanced among the interest groups the nominees represent. They have to show only that they are knowledgeable and experienced.

Mr. **Evans**. I think in the Gulf and in the South Atlantic in particular that would be very useful. In New England and on the West Coast, we really have not had that problem.

Senator **Breaux**. I have one more question. What is the position of the Administration with regard to the question of the inclusion of tuna under the Act? Is it changed? Is it still the same?

Mr. **Evans**. The Administration's position is still the same. On the other hand, that is one of those issues that, as you know, Senator, has been a pretty hard stand on the part of the Administration. And with the change in the Administration now, we are reviewing all of those to see whether or not that has shifted.

I sense some shift.

Senator **Breaux**. What has been the position and why?

Mr. **Evans**. The position has been that migratory species, mostly because of West Coast interest in tuna fishing and some of the problems that that would cause between Mexico and the United States in terms of fishing for yellowfin tuna on the West Coast, should not be subject to coastal state jurisdiction.

Senator **Breaux**. But is not the biological reason because of the migratory nature?

Mr. **Evans**. The migratory nature of the species, and also you are talking about global climate change and ocean changes. As the Gulf Stream moves in and out, it changes some of the distribution of the tuna. So that causes a problem, too.

There is a big fishery on the coast now. Five years from now there could not be.

Senator **Breaux**. I would like you to provide in writing the current existing international agreements on migratory tuna in the South Atlantic.

Mr. **Evans**. We certainly will do that.

Senator **Breaux**. I would also like a description of what these international agreements do and whether they are in fact providing good management or not.

Mr. **Evans**. We will respond to that.

Senator **Breaux**. The final point is very important to Louisiana, the Gulf, and the largest fishing industry in the United States, and that is the shrimp industry. We have got a mess down there. I think we all know it. We have been up and down the ladder on it.

Last year Senator Heflin delayed the implementation of the turtle excluder devices for shrimpers until the National Academy—not until the National Academy of Science got a report in, but required a report which was due almost the same time we passed the Act.

The National Academy was supposed to look at whether these devices would work and whether they were designed in a way that would not interfere too much with the fishing industry.

No shrimpers are on the National Academy advisory board. Yet, you have got people who are in the business of making these devices and who apparently are sitting on the board.

The hearings are closed. They are not open to the public, although the public is paying for the hearings. And the Academy says that they want to do that because they do not want to be interrupted.

Well, I have got some real problems with that process as you can imagine. Can you tell me what in the heck is going on and what can we do about it?

Mr. **Evans**. Well, I cannot tell you right now, but I will sure find out, Senator, and I will get back to you in writing.

This was the first time I heard that the National Academy meetings are being closed.

Senator **Breaux**. Well, the hearings are closed.

Mr. **Evans**. The hearings are closed and that bothers me.

Senator **Breaux**. Yes, indeed, they are closed. And the reason is to allow the scientists to conduct their business without interruption or distraction. I mean, that is nice. We would like to have all of our activities done in that fashion.

But when you have got a person sitting on the advisory panel that is in the business of manufacturing the equipment in question, I think it really calls out for a public hearing.

Is there anything that is going to be done as far as an enforcement standpoint on these regulations until the Academy presents their findings?

Mr. **Evans**. Well, we have enforcement now. Some individuals are being cited for not having TED's, et cetera. In other words, they are given tickets.

We are doing more than that. We just recently in Texas had a boat where we found the remains of a butchered turtle on board, and of course that came under the Endangered Species Act, and that individual will be punished to the full extent of the law.

In Florida there have been a number of tickets handed out. If there is a flagrant violation, I mean if the individual is just blatantly disobeying the Act, then there will be some legal action, even if it is a first-time violator.

But in the case of Texas, nobody has a TED on the deck. You could not find a TED in Galveston. The regulation is just not being followed down there, and there is nobody enforcing it down there. So it is an enforcement problem and I think that I am going to be talking with Admiral Yost about that issue.

We talked about it when we were in Alaska together flying around in a helicopter worrying about another problem. But we did discuss this issue of enforcement, and we will look into it.

Senator **Breaux**. I am more concerned about trying to get the situation worked out so that it will not require the Coast Guard. I would rather have them cleaning up oil spills and doing drug enforcement than enforcing TED's. Is the Coast Guard going to be in the business of enforcing turtle excluder devices.

Mr. **Evans**. They are our at-see enforcement arm right now, and if we have to enforce that regulation in the Gulf we will be using the Coast Guard to do that.

Senator **Breaux**. Thank you, Mr. Chairman.

Senator **Kerry**. Thank you very much, Senator Breaux.

Mr. Borden, we are going to move on very shortly and you are going to be sitting in on the other panel on some New England concerns. Let me just ask you before we shift panels here. The 46 percent reduction proposed in the budgets for the regional management councils, how will that affect the councils' capacity to perform their mandate?

Mr. **Borden**. Well, in my own view it would have a devastating effect on the ability of the councils to fulfil their mandate. At the present time we have inadequate funding to do the job now. That was the basis for my testimony.

Senator **Kerry**. Is somebody sending a message, in effect saying that they are not happy with that structure or they would just as soon see them be defunct?

Mr. **Borden**. Well, some people interpret it that way.

Senator **Kerry**. How do you interpret it?

Mr. **Borden**. Well, I think that, I guess my own view is that some people in fact have not traditionally been pleased with the fact that the councils even came into existence, and in fact have attempted to minimize their impact throughout the past 13 years.

Senator **Kerry**. Two years ago when we visited this issue, there was a question about the relationship between the councils and the Marine Fisheries Service in NOAA, and there was some rockiness in that relationship. How would you say that relationship is today?

Mr. **Borden**. Well, I can only comment from the perspective of New England. I think that your characterization is accurate in terms of a rocky association, at least from an historic perspective.

I think recently, during the past year or two, there has been significant improvements in the cooperation and coordination between the National Marine Fisheries Service and the New England council. I think that we are working together.

The fact that the Service has made decisions to regionalize some of the decisionmaking has certainly improved the ability of various regional directors to respond to specific council concerns.

Senator **Kerry**. Well, I want to thank you, and we will be hearing more from you in the course of the next panel.

Mr. Secretary, I want to thank you. I want to particularly thank you for the service that you have rendered and for the time that you have put in. I think you have always dealt with us candidly, helpfully and openly, and I am sure you must share some measure of our frustration.

I hope you will take advantage of these next months to leave your experience in the most forceful way possible, to lend to the choices that have to be made the utmost sense of urgency. I am sure you will do that.

Mr. **Evans**. I plan to.

Senator **Kerry**. I am sure you do.

Thank you very much.

If we could move on to the next panel as expeditiously as possible, we would appreciate it. Thank you very much.

Mr. Tim Smith, Chief of the Branch of Population Dynamics, Northeast Fisheries Center; and Ms. Barbara Stevenson, Portland Fish Pier, Portland, Maine.

Mr. **Borden**. Mr. Chairman, would you like me to sit in?

Senator **Kerry**. Yes, I would like you to stay there, if you would.

I would like to ask you if you would, in the interest of time here, we will place your full statements in the record as if read. If you could summarize, it would give us more time to make inquiries.

I think also we have an important driftnet panel following, and we want to have time for everybody, if possible. Thank you.

Dr. Smith, do you want to lead off.

STATEMENT OF DR. TIM D. SMITH, CHIEF, POPULATION DYNAMICS BRANCH, NORTHEAST FISHERIES CENTER, NOAA-NMFS, WOODS HOLE, MA

Dr. **Smith**. Yes, thank you, Mr. Chairman.

I have prepared a rather overly long testimony, which is better characterized as extractions of material published elsewhere, rather than any information prepared personally for this meeting.

Senator **Kerry**. Let me just interrupt you to say that I reviewed the materials which you prepared and which you put together for us, and I want to tell you I think it is extremely helpful. It is lengthy, extensive as a matter of fact, but I think very, very important, and we really appreciate the effort that went into that compilation. It will be retained for our files.

Dr. **Smith**. I appreciate that, because I was concerned that it was overly long.

What I would like to do in summary of my testimony is point the committee to several of the graphs and try to offer some interpretation of what is there. I should note that the interpretation that I will be offering is based on my experience in the region since 1985, previously working for the Southwest Fishery Center in San Diego on the tunas and porpoises. So my intepretation is based on examination of the material as printed and the experience I have gained since 1985.

Senator KERRY. I think it would be very helpful if you do summarize that, and then I have to ask less questions. And if you could give us a bottom line of what those graphs mean and what you have found, I think it would be helpful.

Dr. SMITH. If you will turn to page 60, the major questions as I understand it looking at the material is characterized. This graph shows the catches of haddock as having gone along in the 40,000 to 50,000 metric ton range for several decades, followed by an enormous spike, and then an enormous decline following that spike. This spike is associated with the 1963 year class, which was very successful; the subsequent decline is associated with a large increase in fishing effort, particularly foreign vessels.

The question that faced the councils when they were created and faced the Fisheries Management Act in the late seventies is if the increase that is shown in the late seventies going to continue and return the fishery to its condition before the foreign fleets were involved?

The answer turned out to be no. The questions that I have addressed in my selection of material in my testimony is why did we not go back to the catch levels of 40,000 to 50,000 tons? Why indeed are we now down around a few thousand tons of haddock?

Now, this figure for haddock characterizes the situation for a number of species, but is not in itself the whole story. Other graphs in the document show other factors, particularly looking for instance at page 25, which is a graph of what is going on with the haddock fishery in the more recent time period, from 1962 on. This is a piece of the graph that was given earlier, for the more recent time.

This graph includes the landings. So we see here the peak in the late seventies of landings, which was very much smaller than the peak in the sixties. So we are looking just at the latter period.

The peak in the late seventies and then the gradual decline in the catches is associated with a pronounced decline in the stocks as measured by the autumn survey index, the research surveys.

Senator KERRY. Let me just put some language to that if I can. I know people cannot see here. But back in 1962, is that correct, the landings were at about 50 tons, metric tons, is that accurate?

Dr. SMITH. No, that should be 50,000 tons.

Senator KERRY. Sorry, in thousands, all right. So 50,000 in 1962, and this is haddock.

Dr. SMITH. Yes.

Senator KERRY. And then there was an increase about 1964, 1965, up to the 150,000 tons, and then a precipitous decline well below the 1962 level, continuing almost along the baseline of the graph all through the seventies, at around 15,000 tons, probably, is that accurate?

Dr. SMITH. I think we are looking at two different graphs.

Senator KERRY. Well, this is page 25.

Dr. SMITH. Thank you. I was looking at the wrong graph.

Senator KERRY. Okay, page 25, the haddock graph.

Dr. SMITH. Yes.

Senator KERRY. With a slight bump in the late seventies, and now back down, almost a continuum at that low level, is that accurate?

Dr. SMITH. That is correct, and that associates directly with changes in the spawning stock biomass, with the amount of fish out there, as opposed to changes in the fishing effort.

Senator KERRY. The first graph that you referred to showed the catches from 1930 all the way through 1960. For a period of about 30 years landings were relatively constant, although they did vary from year to year. Then there was a sudden leap up in landings of haddock, literally four times as high, in about 1965, followed by a precipitous drop from which the fishery has never really recovered. Is that correct?

Dr. SMITH. Well, I think the important thing is——

Senator KERRY. In the last 19 years.

Dr. SMITH [continuing]. Following that precipitous decline there was a very strong signal of recovery that has not followed through, and that is the important piece in terms of how the management process and the biology are interacting.

The picture that you just described far better than I did about haddock is seen again for several other species, and I will not go into the details. These are included in the graphs in the testimony on the pages numbered in the 20's. Not all of the situations are as clear as that for haddock, although for some, such as cod, we have recent information that was just prepared last fall that suggests that the decline in the catches of cod, which you will see on page 21, cod showed an increase in the late seventies and a subsequent decline. That subsequent decline has been associated now with a very large reduction in the spawning biomass, an observation we were not sure of until last fall.

Senator KERRY. Do we know why that occurred?

Dr. SMITH. We suspect that that is due to the increased fishing effort over the period since the implementation of the FCMA.

That can be seen in the graphs that are on pages 11, which tries to combine the several sources of information, for many species in the ecosystem, referring to Senator Stevens' comment earlier of looking at the reproductive capacity of the whole ecosystem.

The graphs we were previously referring to were for cod, haddock, and yellowtail, and we can go through that litany ad nauseam, and that has been done over the last several years. The graphs on page 11 show the research vessel surveys for species grouped together, for example the principal groundfish, without listing all of the species, include the obvious cod, haddock and yellowtail.

The picture that we see on page 11 is one that relates to the whole ecosystem, of a decline in abundance of fish in the sea, particularly groundfish, an increase in the late seventies, which was real—there was real haddock and there was real cod being reproduced, there was real yellowtail—and then a subsequent decline.

The other fin fish show a slightly different pattern, but that is not the principal thing, given the level of catches. Skipping over the pelagics, the bottom frame shows an important issue of skates and dogfish, which have increased substantially over this period, and there is some concern about ecological systems there.

If I can refer you to page 13——

Senator KERRY. Can you go a little further for a lay person and a neophyte? What is the significance of that? Tell us what that means? Tell us what that means in lay terms?

Dr. SMITH. Well, one interpretation of what is going on is that as the available fish that are of high market value have been reduced in abundance, the abundance of other species with much less or even no market value or maybe market values only recently, such as several species of skates and spiny dogfish, have increased, perhaps, it has been suggested, replacing or filling up the available niche, in ecological terms.

Senator KERRY. Is there uncertainty?

Dr. SMITH. There is considerable uncertainty about whether that is a reasonable interpretation. The observations we have for comparison come from work done at our Narragansett Lab comparing large marine ecosystems around the world.

And the comparable pair of large marine ecosystems that we can see are in the Gulf of Maine-Georges Bank versus the North Sea. In the Gulf of Maine-Georges Bank, you have seen this increase in skates and dogfish. You also have a fishery that does not catch those species particularly.

In the North Sea you have a fishery that does catch skates and dogfish, as well as cod and haddock and so forth, and you have not seen an increase in the skates and dogfish. But the evidence is not conclusive. It is an interesting idea that we are working on now.

The figures corresponding to those on page 11 looking at the fisheries in the aggregate are on page 13. The graph on page 11 dealt with our research trawling surveys, which we try to make relatively representative, but we are not very good fishermen. We do not intend to be on those trawl surveys. The real proof of the pudding is what the fishermen do.

On page 13 we have the aggregate landings, showing the recent changes. Now, this is for the FCMA period, not including the earlier periods for haddock that I showed, and shows an increase in the landings up through the early eighties and the subsequent rather precipitous decline. That decline has continued.

The fishing effort in the second panel shows an increase over that period, followed by what we hoped would be the start of a decline in 1987. But the 1988 figures, which are not shown there, show almost the same level as 1987.

Then finally, on the bottom panel an index of how hard it is to go fishing, as it were, the catch per day's fished, showing, after a slight increase early on, a general tendency to hold steady or decline. One comment is that those indices are somewhat suspect in underestimating how difficult it is to go fishing, as it were, because the improvements in efficiency due to computerization and mechanization of the vessels are not included in that data. It is just the days absent from port.

The graphs on pages 11 and 13 show the aggregate picture in terms of Senator Stevens' concern about the whole ecosystem. I would focus you also on page 55. Page 55, dealing with Mr. Borden's comment earlier about cooperation between the councils and the agency, starts the executive summary of a report prepared by a group chartered by the New England Fisheries Management Council, called the Technical Monitoring Group, that is comprised of representatives from council staff, the several states, representatives from the Fisheries Service, including myself.

We prepared that report to give us a reference point on where we are at with the implementation of the Multispecies Fisheries Management Plan, and there a number of conclusions in that report that I would offer to your attention. One is that the overall management system—and these are paraphrases from the report, from the executive summary actually—the overall management system appears inadequate for resource maintenance.

Our focus there was technical. It dealt with a number of issues, but resource maintenance is a particular concern.

The report also notes that the targets that are set up in the fisheries management plan are not being met for cod, haddock, yellowtail, and pollack. There are other species in difficulty, but those in particular are identified where the information is adequate to draw a firm conclusion.

The report also notes that the management at present appears to allow fishermen to capture short-term benefits at the expense of long-term conservation of the multi-species fishery resources. It notes in passing that there are difficulties with the Canadian fisheries and the transboundary aspects of several of these stocks. The report also recommends that other methods more direct for controlling fishing be explored, not that they be adopted, but that considerable research needs to be done to figure out how they might work, to predict their implementation's success. For example such things as catch limits, which have been tried in the past with some large degree of difficulty, direct limits on effort, and large area controls, should be explored.

That is a rough summary of the material included in my written testimony. There is other information that I would be happy to share, but perhaps it is better to leave that to a question and see where you would like to go.

Senator **Kerry**. Thank you.

Ms. Stevenson.

STATEMENT OF BARBARA STEVENSON, 2 PORTLAND FISH PIER, PORTLAND, ME

Ms. **Stevenson**. Yes. I would like to try to stay with generalities in my comments.

One of the most important things that I think we need to focus on is the need for flexibility and flexibility in all spheres. It is essential in enforcement to have quick, effective enforcement, which means a lot of flexibility in what you do and when.

Frequently, when the right enforcement is not done in the beginning it is much more difficult, much more costly, and sometimes virtually impossible to get to the position one could have been at if one had done the right things first.

The second sphere of flexibility has to do with the councils and the concentration on what should be done at the national level. Different regions are at different points in the fisheries management problem spectrum. Although most will eventually confront the full range of problems, management must begin with the current status of a fishery in a region.

The role of the National Marine Fisheries Service should be limited to ensuring that the national standards are met, that there is effective implementation of the plans, which in my view has been a significant problem, and most importantly, enforcement, and that enforcement be at an appropriate level, strict, and equitable.

While I do not agree with everything that Tim said, I do believe that research and data are essential. And even though the New England council has done an excellent job of devising three management plans requiring only the most basic fishery in-stock information and none of it is needed on a real-time basis, there still are significant gaps.

As an example of this gap, in the fishery which is most important to me, which is gray sole, looking at the most recent documents, the long-term potential is unknown, the F0.1 is unknown, the FMAX is unknown, the F for 1987 is unknown.

They say the status of exploitation is "over-exploited." I would not even necessarily argue that. How can you when everything up to that is unknown?

He also mentioned the haddock situation. I would just like to point out that the significant decline in haddock occurred long before the FCMA and that the most recent decline in haddock occurred prior to the current management plan.

We lost our significant fishing grounds to Canada and there is no possibility that we could ever land the landings that were historically made, no matter what we did. The Canadian management system is very different and they use gear that would be illegal in U.S. waters. I do not believe haddock is something that we could possibly address until something different occurs between the U.S. and Canada in management of the stocks.

The decline in catch per unit effort that he mentioned can be viewed as a reflection that the management plan is working. The entire purpose of the plan is to make it harder to catch fish, so that the stocks could come back up.

We have had a lot of difficulty with people saying there is major problems with the plan because landings are going down, catch per unit effort is going up. That is what the plan was geared to do. So in my view, in a significant manner it is doing what it was geared to do.

That is not to say we are there yet, but there were quite a few years between the collapse in haddock and when the councils took over, and I think that you need to give them much more time before it is fully put on their shoulders.

Continuing with data enforcement, it seems to me that an agency, NMFS, which cannot by its own mission compare a single day's observed catch with reported catches would and does continue to urge management measures requiring significantly more knowledge and enforcement. I think that they have an unrealistic view of what it takes to do certain things.

Finally, on the matter which appears to be the issue of the day, the New England industry has worked very hard and expended a lot of effort in doing a good job of marketing specialty products to obtain the most benefits possible for the nation from them. A significant market for these is Japan.

My industry is concerned with potential problems with our markets if the driftnet agreement should run into difficulties, which I gather you all support the difficulties. I just ask you please to remember that any actions that you take will have national consequences.

Thank you.

Senator KERRY. Thank you very much.

Mr. Borden, do you have any comments that you wish to make in addition to your earlier broader testimony, relative to New England specifically?

Mr. BORDEN. Well, I would just comment that, from my own perspective, I think that the point that the committee should focus on is the issue of—just to back up, I will not disagree with Dr. Smith's assessment of certain stocks as far as them being down.

But I think the issue the committee should focus on is the reason why these stocks have declined. And I think there is a whole host of reasons for it.

Senator KERRY. Well, what are the most important reasons that you attribute the stock decline to? One, two, three, in order?

Mr. BORDEN. Well, I think that one of the principal reasons is there is too much effort being expended to fish for these species. I think that the second most important reason is——

Senator KERRY. Are there too many fishermen or too much fishing? How do you separate that? Too much entry into it?

Mr. BORDEN. No, I would not necessarily characterize it as too much entry. I think there is too much fishing effort, which can be broken down into legal and illegal fishing effort.

The second most important component of the problem is the issue of enforcement.

Senator KERRY. Would you give us a little more about that, illegal and legal? By the same people or separate people?

Mr. BORDEN. There are a number of different components in the fishing industry. Some fishermen fish legally, others take advantage of the rules and regulations.

Dr. Evans in his testimony earlier pointed out from his own perspective the inadequacies of the enforcement situation.

Senator KERRY. Is there any hope? I wanted to ask you about this as well, Ms. Stevenson. Is there hope? Is there any way to instigate self-enforcement here?

Ms. STEVENSON. I believe that the level of self-enforcement has significantly increased under this plan, because there is a general agreement among the "good fishermen" that it is a good plan. And so they are exerting some level of self-enforcement.

Self-enforcement can only go so far, and if there is only self-enforcement it cannot do the job. If there is the enforcement to catch the really bad guys, then self-enforcement can take care of much of the rest of the problem.

Senator **Kerry**. What is the next part of the problem? One part is fishing effort. The second part?

Mr. **Borden**. The second part I would characterize as a lack of enforcement resources. And I think that the simplest way to characterize this problem is the nature—in the groundfish industry, you are trying to regulate an industry that has the ability to land product on literally 5,000 miles of coastline.

There are hundreds and possibly thousands of offloading locations. In order to effectively enforce that, it requires a certain minimum level. The National Marine Fisheries Service is the principal dockside component which enforces these regulations. There are 23 agents, including administrators, that are supposed to be enforcing these regulations.

Coupled with that, these same agents have to enforce 25 other programs, such as marine mammals and a whole host of other things. It is just an impossible situation.

The analogous situation that I would point out for the committee, if we had 23 police officers to police the highways between Maine and North Carolina, how effective do you think the speeding regulations would be? They would not be.

Senator **Kerry**. What would you say to those who say that if we had many, many more than that, they would still not be that effective? We may have many more enforcers with respect to those thousands of offloading places, but much as in the narcotics trade, you will simply drive people off into a different lagoon, a different offloading mechanism.

Mr. **Borden**. Well, from my own perspective, it is a multifaceted problem. We have problems with enforcement. We also have problems with program administration. We have problems with the adjudication process, where there are insufficient attorneys to argue the cases that in fact are brought up to be argued or to be tried.

There is only one administrative law judge in the entire United States, and the other one is a part-time administrative law judge. The issue of fair and just and quick treatment in the legal system is nonexistent in this system.

Senator **Kerry**. Senator Stevens, do you want to ask any questions of this panel?

Senator **Stevens**. Well, I am interested, as you know, in the total problems of the oceans, and I was interested in these charts. I was just looking at them again, Dr. Smith. In particular, you were going to go over to chart 13, the chart on page 13.

Mr. Chairman, to put them in perspective, I notice the efforts increasing, the landings are decreasing. I do not understand this catch divided by effort portion of that graph. Could you explain that?

Dr. **Smith**. Yes, I would be happy to do that.

Senator **Stevens**. Is that meaningful? Is it an economic chart?

Dr. **Smith**. We do not put it forward as an economic chart. There is some economic analysis, such as dollars per day absent, that are being done. We put the landings per unit of effort forward, just the ratio of the top two graphs on page 13, as an index that is often used to reflect how many fish are out there.

For instance, if you go fishing and catch five fish, there may have been more fish out there than if you go fishing and catch one fish in your day's work. You may not have been as good a fisherman that day, but likely there was more fish out there. That is the sense.

Senator **STEVENS**. Does effort reflect the number of boats or the number of days? There is no way of telling whether the number of fish increased in this period. The efforts increased and the landings have decreased, but I think that has got to be a function of the size of gear, the type of gear, the number of fishermen, the number of boats.

Is that reflected?

Dr. **SMITH**. What is here is the number of days that nets were in the water. Actually, it is measuring hours in a 24-hour day that nets are in the water.

Senator **STEVENS**. Well, how about the miles of net? I mean, how about the number of boats?

Dr. **SMITH**. In this case, very different from the Pacific, you have got increases in the number of vessels, but you have got essentially, with minor efficiency changes, the same trawl, roughly the same size.

Senator **STEVENS**. I see.

Dr. **SMITH**. So this is mostly an increase in the number of vessels, as I understand it, that have been drawn into this fishery, which looked to be a profitable exercise and for many fishermen still continues to be.

Senator **STEVENS**. Well, I look forward, Mr. Chairman, to studying this statement that Dr. Smith has prepared. I think it is very interesting in just the brief time I had to look at it. I just received it this morning.

But I might be back in touch with you. I am sure our people from Alaska are going to be very interested in some of those statistics you have got.

Dr. **SMITH**. I would be happy to. And I think just to comment on that catch per unit effort, that bottom frame that you referred to, Barbara's comment that declines in that index are just what the FMP is designed to do I think is not correct.

That index reflects declines in the abundance of the stocks. Very roughly, there are several goals to the fisheries management plan and these do not directly relate to reducing the effectiveness of the fleet.

Senator **STEVENS**. Thank you, Mr. Chairman.

Senator **KERRY**. Thank you, Senator Stevens.

Ms. Stevenson, the last question, if I may is, scientists have expressed a concern, and Senator Stevens has talked about it here, of course, this morning, about the overall impact on the ecosystem of overfishing and what happens.

The graphs that Dr. Smith has shown us indicate a significant increase in certain kinds of fish and obviously the decrease in the groundfish, the haddock, flounder, and so forth. Have you seen any evidence of a response among seafood buyers who are going to start to market some of these other fish? Has there been any efforts or talk about trying to create markets for some of the other fish, to shift some of the imbalance?

Ms. **Stevenson**. Yes. But in the definition of "groundfish," what I define as groundfish and what they define as groundfish is different.

Senator **Kerry**. What do you define as groundfish?

Ms. **Stevenson**. It includes several species that they do not include, because they use an historic perspective. The historic perspective of the fishery was that it was a three-stock fishery. It is now about a 15-stock fishery, and the groundfish that they talk about is the original three stocks.

As I said, my significant fishery is gray sole. It is not included in there. I catch skate, I catch dogfish, I catch ocean pout, cusk, hake, catfish—a lot of species that they do not include.

I get more money for some of them than I do for the historical species. I do not believe that there will be any significant financial gain if we get back to high landings, because a 20 percent increase in the landings of cod this past year did not gain us anything in value. So you cannot equate more fish with more value.

To more directly answer your question, yes, we land skate also. Some of these are specialty export markets and they can only grow at a certain level. We have in the past been very active in dogfish fishing ourselves and plan to be again in the future, but because of waste problems—there are all sorts of other problems that cause people not to fish on things.

For instance, last year for a significant portion of the year hake was too low a price to bring in. So if you see a drop in hake landings, that had nothing to do with the hake stocks. That was because no one was fishing on them. They were avoiding them because there was not enough value to bring them in.

Senator **Kerry**. But nobody is avoiding flounder, yellowtail, haddock, are they?

Ms. **Stevenson**. Flounder and yellowtail, no; haddock, it is a middling fish.

Senator **Kerry**. What is your reaction, Mr. Borden and Ms. Stevenson, to the depletion statistics that Dr. Smith has set forth?

Ms. **Stevenson**. Go ahead.

Mr. **Borden**. Well, as I characterized my comments before, I said that in the case of Dr. Smith's characterization of certain stocks I would agree that those stocks are down. All is not bleak, though, in terms of the Northeast multi-species FMP.

There are significant indications in the case of yellowtail—and these are very preliminary; I do not think that they have necessarily been evaluated properly by Woods Hole; and that is not a criticism of Woods Hole; they just have not had sufficient time—that there are increases in that stock.

There are increases in juvenile whiting. There are increases being reported by fishermen in dabs and several other species.

I think coupled with that we have significantly improved certain systems that manage this fishery. The Coast Guard recently implemented changes in priorities so that they, number one, have put fisheries enforcement as a higher priority; and they have also started to use small boats to effectively enforce regulations closer to the coast. That will make a significant difference in the groundfish plan.

The last point I would like to make is that the council over the last two and a half years has been in my own view extraordinarily aggressive in fine-tuning the management process. This multi-species program has been in place for two and a half years. It is a long-term program. It is going to take time to work.

During the last two years, as a result of comments from both the National Marine Fisheries Service and the Coast Guard, we have made significant adjustments in the program to tighten up the regulations, to improve the effectiveness of the regulations.

The most recent example of that is the council is moving forward with a proposal to have a flexible area action system, where we can close areas in a short period of time, several weeks, as a result of these very unpredictable occurrences of small juvenile fish, in order to protect those fish and prohibit discarding in those fishes.

So from my perspective, I think there is some cause for optimism. As Barbara has indicated, we have not eliminated all the problems, but I think we are working on them realistically.

Senator KERRY. The last question: Is the industry's attitude changing towards limited entry?

Mr. BORDEN. You may get different answers to that depending upon who you are asking the question. But my own view is that there is a much more candid evaluation of the merits of limited entry.

In fact, the New England council has currently embarked on a process whereby we are evaluating that in terms of every single fishery. Each oversight committee has been charged with the responsibility to do that. So I would say yes.

Senator KERRY. Is that where the issue is going in the next months, into this evaluative process?

Mr. BORDEN. Right.

Senator KERRY. Ms. Stevenson, you chuckled at that.

Ms. STEVENSON. Yes. Discussions of limited entry have gone on for many years, and right now it seems to have come back to the forefront. It is an issue that looks great on the surface, but when you really delve into it, as the council is doing—and I have no objection to their delving into it because I know what they will find.

In practice, particularly in the type of fishery we have in the Northeast, I see no reasonable application, particularly if you cannot guarantee about a ten times increase in the National Marine Fisheries Service budget.

Senator KERRY. For enforcement purposes?

Ms. STEVENSON. And just simply tracking. They cannot keep track of one day's records now. In any type of limited entry system, you have to know what someone is doing virtually all the time.

Senator KERRY. Thank you all very much. We appreciate it.

We will leave the record open for any additional questions, but I appreciate very much your coming and your patience.

If we could ask the members of the high seas driftnet fisheries panel to come forward. Thank you.

[Pause.]

Senator KERRY. Thank you all. Thank you for your patience. We welcome you here today. I would like to ask if we could proceed through all the testimony at one time, and then Senator Stevens and I will proceed with questions at that point.

Secretary Smith, if you would begin. We would like you to lead off. And you are joined by?

STATEMENT OF RICHARD J. SMITH, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY EDWARD E. WOLFE, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS; AND JAMES DOUGLAS, DEPARTMENT OF COMMERCE

Mr. SMITH. I am joined by Ambassador Edward Wolfe, who is the Deputy Assistant Secretary in the Bureau for Fisheries and Oceans.

Senator KERRY. Thank you.

We will proceed with the other panelists in order afterwards. Secretary Smith.

Mr. SMITH. I am pleased to be here today to discuss the Administration's efforts to conclude driftnet monitoring and enforcement agreements pursuant to the Driftnet Impact monitoring, Assessment, and Control Act of 1987. I have submitted my statement for the record, but with your permission I will go through it quickly.

With me, as I mentioned, is Ambassador Edward E. Wolfe, the Deputy Assistant Secretary for Oceans and Fisheries Affairs. Also, Jim Douglas from the Department of Commerce is at the table with us also.

Early last year we initiated driftnet negotiations with Japan, Korea, and Taiwan, with the goal of reaching agreement on programs to determine the impact of driftnet fisheries on the marine environment and to ensure that U.S.-origin salmon are not taken by driftnet fleets.

I am pleased to report to you that we recently negotiated an ad referendum understanding with Japan and Canada which includes driftnet monitoring and enforcement programs for the Japanese squid driftnet fleet for 1989, which is currently under review within the U.S. government.

The monitoring program calls for the placement of 32 Japanese, nine U.S., and five Canadian observers on commercial driftnet vessels, including an extensive monitor effort covering about 19 percent of the estimated net retrievals in the expanded northern boundary area during July and August.

In addition, U.S. and Canadian observers will participate on one Japanese research vessel in the squid driftnet fishing area and on one research vessel in the area of the large-mesh tuna driftnet fleet.

With regard to enforcement, Japan has agreed to more than double its patrol vessel effort in the northern boundary of the squid fleet, from 265 vessel days in 1988 to 600 vessel days in 1989, and to prohibit the transfer of catches at sea by driftnet vessels.

Further, Japan will double its minimum port confinement penalties for violations of the driftnet regulations and exchange with us enforcement observers on our respective patrol platforms in this region.

Japan has also agreed to consider the deployment of automatic satellite transmitting devices in 1990 on squid driftnet vessels, taking into account the experience we will have gained in testing such devices on U.S. vessels in 1989 and a further exchange of views with the United States and Canada.

It is important to note that this agreement provides for initial monitoring and enforcement programs for the 1989 season only. Based on the results of these programs, Japan has agreed to begin negotiations in early 1990 on expanded programs for the 1990 fishing season, including for the large-mesh tuna driftnet fleet.

We believe that a multi-year effort is necessary to develop and fully implement these programs.

Mr. Chairman, we emphasized for years that we need to determine the impact of driftnet fisheries on the marine environment, and one of the primary purposes of the Driftnet Act is to obtain such information. The monitoring program Japan has agreed to provides us with an unprecedented quantity of data on incidental takes in this fishery and will for the first time address this vital informational need.

Together with the expanded enforcement effort, we will obtain from this agreement an excellent beginning for better understanding of Japan's driftnet fisheries, which will provide a base for expanded cooperation in the future.

Our driftnet negotiations with Korea and those with Taiwan, conducted through the American Institute in Taiwan, have been disappointing to date. Both maintain their opposition to U.S. driftnet proposals, particularly those related to high seas enforcement.

Although neither Korea nor Taiwan conduct at-sea enforcement efforts, both have maintained that, because the fisheries occur on the high seas, enforcement measures should be the sole prerogative of the flag state. Taiwan represents a particularly significant problem in this regard because of continued evidence of directed illegal salmon fishing by driftnet vessels from Taiwan.

We believe, however, that the program we have negotiated with Japan and Canada could serve as a spur for positive action from both Korea and Taiwan if we can move quickly enough to complete our review and implement the programs for the 1989 season. Thus, the understanding with Japan could assist in gaining more cooperation from Korea and Taiwan.

Following the negotiations in Tokyo, I met with the head of the Korean National Fisheries Administration to emphasize the importance of Korean cooperation on this issue. We believe there is now a better understanding of the importance of prompt action to meet U.S. requirements under the Driftnet Act.

The American Institute in Taiwan has made similar demarches to the Coordination Council for North American Affairs, representing the authorities on Taiwan. We have made clear that, particularly in light of the overwhelming evidence of continued driftnet violations, Taiwan must take significant measures to control its driftnet fleet. Driftnet negotiations with Taiwan will resume May 23 to 24 in Washington, and we anticipate the resumption of talks with Korea in June.

Should adequate driftnet agreements not be implemented by June 29, the Driftnet Act requires the Secretary of Commerce to certify such fact to the President, who then has discretion to place sanctions on imports of fisheries products.

We should also note that significant progress has been made in expanding our cooperative efforts with the Soviet Union with regard to interceptions of salmon by driftnet vessels. Under a February 9 memorandum of understanding, we have agreed to cooperate in high seas enforcement activities and the exchange of information on illegal high seas salmon fishing.

Both countries share an interest in the conservation of salmon on the high seas in the North Pacific, and this increased enforcement cooperation is an important step in providing for adequate protection for salmon stocks. We will be meeting with the Soviets in June to continue our discussions on a high seas salmon interception multilateral agreement, in addition to other high seas fisheries issues.

In closing, I would like to reiterate the Department's strong concern over high seas driftnet fleets and its commitment to address this serious matter. The driftnet agreement with Japan represents an important first step in this process, and we hope will be followed by the conclusion of national monitoring and enforcement programs for the driftnet fisheries from Korea and Taiwan as well.

Thank you.

(The statement and questions and answers follow:)

TESTIMONY OF

AMBASSADOR EDWARD E. WOLFE
DEPUTY ASSISTANT SECRETARY
BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS
DEPARTMENT OF STATE

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE

MAY 17, 1989

Mr. Chairman and Members of the Committee:

I am pleased to present testimony on the reauthorization of the Magnuson Fisheries Conservation and Management Act (MFMCA). I would like to say at the outset that, from the perspective of the Department of State, the Act and its implementation have been a noteworthy success. The Department has no changes to recommend to the Act.

As the Committee is aware, among the fundamental purposes of the Magnuson Act are to conserve and manage U.S. fisheries resources, to promote domestic commercial and recreational fishing under sound conservation and management principles, and to encourage the development by the U.S. fishing industry of fisheries off the coast of the United

States. The principal role of the Department of State in the process established by the Act to achieve these purposes has been to negotiate Governing International Fisheries Agreements (GIFAs) with foreign nations desiring to operate off the U.S. coast, and to allocate surplus American fisheries resources to fishermen from countries with which the U.S. has GIFAs in force.

The principal fisheries policy which the United States has pursued since 1980 has been called the "Americanization" of fisheries in the United States Exclusive Economic Zone (EEZ). Consistent with this policy, the Department of State and the Department of Commerce have followed the allocation criteria specified in section 201 of the Magnuson Act. During the decade of the Eighties, direct allocations to foreign countries have fallen from a high in 1980 of 2,176,789 metric tons (MT) on both coasts, to 51,577 MT (Atlantic mackerel and bycatch species) thus far in 1989. The policy has been responsible for, and at the same time has been driven by, dramatic changes in our fisheries. The growth in the U.S. catch of Alaska pollock and the development of the squid fisheries on the East coast are two examples which come to mind. As the foreign fisheries declined, joint ventures expanded during the early part of the same period. Joint ventures, usually involving U.S.

fishermen selling their catch to foreign vessels in our zone, reached a peak in 1986, when 1.5 million metric tons were caught. "Americanization" is rapidly reducing joint venture fishing operations each year, which is the intent of the law.

To send the diplomatic signal to foreign countries fishing in the U.S. EEZ that the U.S. was changing its approach with regard to bilateral fisheries agreements, we began several years ago to extend certain agreements for only a two year period. We have not renegotiated a GIFA for several years. Our approach has been to offer each GIFA nation the choice of accepting a two-year extension of their existing agreement (with changes to make it conform with current U.S. law and policy), or to allow their agreements to expire. During the Eighties, the number of GIFAs in force has been reduced from 17 to 9, counting the comprehensive bilateral fisheries agreement with the Soviet Union. I might note at this point that we do not have a goal of eliminating all GIFAs, since in some cases GIFAs are a useful vehicle for arrangements, such as joint ventures which may benefit U.S. fishermen during this stage of development of the U.S. fishing industry.

From an international perspective, Mr. Chairman the problems which the MFCMA intended to address when it was written over a decade ago, for the most part have been resolved. That is, the U.S. is now fully controlling the fisheries resources off our coast. In fact, for all practical purposes, foreign fishing in the U.S. zone has been eliminated. One might say that, in a sense, a chapter in U.S. fisheries relations with countries which traditionally fished off the U.S. coast, has been closed.

We are now pursuing new and innovative methods of doing business with our foreign fishing partners. For example, we have been promoting the establishment of equity joint ventures between U.S. and foreign companies. Japan has participated in the development of several surimi processing plants in Alaska and other countries are currently involved in other equity investment projects.

As we have gone about the process of reducing, and in fact practically eliminating, the foreign fishing off the U.S. coast, we have inevitably encountered a reaction from the foreign governments involved. While U.S. fisheries policy and corresponding actions have not been popular with our foreign colleagues, all of the foreign nations involved have accepted the reality of coastal state control over the management of coastal fisheries resources inside 200 miles, and its inevitable consequence. I might add, for the record, that we have not experienced any serious foreign policy problems as a result of the phase-out of foreign fishing in our zone.

Mr. Chairman, as one chapter of our international fisheries relations has come to a close, other international areas are requiring more of our attention. In some cases, these areas have long been the focus of considerable attention by the Department of State. We have important responsibilities in international fisheries matters other than the allocation of surplus resources to GIFA countries. Three broad areas of U.S. international fisheries interests come to mind.

The first area involves the question of how to deal with fishery stocks which are partly in the U.S. zone and partly in either the zones of neighboring countries or in the high seas areas beyond the 200 mile jurisdiction of any nation. For example, one of the main issues we face in the North Pacific is the dramatically increased level of fishing by third countries in the Bering Sea beyond 200 miles, the so-called "donut" area. In this region, fishing vessels from Japan, Korea, Poland, and China have concentrated their efforts and increased harvests of pollock from some 100,000 metric tons (MT) in 1984 to about 1.3 million MT in 1988. This is totally unacceptable. According to our scientists this dramatic increase in fishing is adversely affecting economically vital U.S. pollock stocks as well as other stocks in the Bering Sea. We are currently working with the Soviet Union, the other Bering Sea coastal state, to develop measures for addressing the unregulated fisheries in the "donut" area. In these talks, the United States has proposed calling for a temporary moratorium on fishing in the "donut" by all countries, including the U.S., until an adequate multilateral conservation regime for the region can be established.

We also face a major conservation problem in the form of the large squid and tuna driftnet fleets from Japan, Korea, and Taiwan operating throughout the North Pacific. These fleets utilize daily some 30,000 to 40,000 miles of floating driftnet, which entangle those marine resources migrating through the fishing grounds. This type of wasteful and indiscriminate fishery takes large quantities of marine mammals, seabirds, and other non-target living marine resources. In addition, if the fisheries operate in certain northern areas, they will intercept valuable U.S.-origin salmon. There is, in fact, evidence that squid driftnet vessels from Taiwan, and possibly other countries, are involved in illegal directed salmon fishing. For instance, the U.S. Coast Guard recently sighted several Taiwan squid driftnet vessels operating in an area that is closed to them. This incident has added to our concern with the activities of the driftnet fleets in the North Pacific.

Pursuant to the 1987 Driftnet Act, we have been involved in talks with Japan, Korea, and Taiwan with the aim of reaching adequate agreements for the monitoring and enforcement of these driftnet fleets. I am pleased to report that we have recently concluded such agreements in substance with Japan. These agreements would provide the U.S. with reliable information regarding the effects of these fisheries on marine resources. They would also help prevent illegal salmon fishing by Japanese driftnet vessels. Finally, we are hopeful that the Japanese agreements will increase pressure on Taiwan and Korea to conclude similiar agreements.

Progress towards driftnet agreements has been slow with Korea and Taiwan although talks with Taiwan are tentatively scheduled to resume shortly. We have faced resistance on the grounds that fisheries on the high seas should be controlled only by the flag state. If adequate agreements are not reached by June 29, the Driftnet Act requires that the Secretary of Commerce certify such fact to the President under the Pelly Amendment. The President then has the discretion to place sanctions on imports of fisheries and aquatic products from the certified party.

On a more positive note, turning to the matter of neighboring countries, one approach to bilateral fisheries relations is the recently concluded comprehensive bilateral fisheries agreement with the Soviet Union, which covers all aspects of our bilateral fisheries relationship. The agreement provides for access to each other's waters on a reciprocal basis and for cooperation on fisheries issues of mutual interest. The agreement also lays the groundwork for increased cooperation on bilateral fisheries science and research issues.

This landmark agreement, which was the product of eight years of talks, provides U.S. fishermen for the first time access to the Soviet 200 mile zone. Because of ongoing economic restructuring efforts in the USSR, our Embassy in Moscow informs us that there is strong Soviet interest in establishing joint enterprises with foreign companies, especially in the field of fisheries. Several U.S. companies are now in the process of finalizing joint enterprises with their Soviet counterparts which will provide for joint harvesting, processing, and marketing of fish from Soviet waters.

The Soviet agreement also provides for increased bilateral cooperation on fisheries issues of mutual concern. As noted previously, one of the major issues both countries have been considering is the effect of the vastly increased fishing levels in the Bering Sea "donut" on adjacent fish stocks in the U.S. and Soviet EEZs. As I will elaborate later in my testimony, we have also been working jointly to address the conservation of salmon in the high seas areas of the North Pacific.

The idea of reciprocal fishing arrangements may not be appropriate in other cases involving U.S. fisheries relations with neighboring countries. In the case of the US/Canada fisheries relationship, for example, such an approach would likely be very controversial. On the U.S. side, there is no domestic consensus that the U.S. and Canada should have a more formal fisheries relationship involving reciprocal fishing rights or joint management efforts. Mr. Chairman, as we know from past experience, unless such a domestic consensus exists, it is futile for the government to proceed. At the same time, we recognize the need for close cooperation with Canada on fisheries matters, since in some instances both countries are managing the same stocks of fish, and historically our overall fisheries trade and industry relationship has been a very close one.

Our approach has been to enhance US/Canada communications on fisheries matters and to find as much common ground as possible on fisheries issues of mutual interest. At a minimum, we need to ensure that the different approaches to fisheries management used in the Canadian and U.S. systems do not conflict and thus counteract each other.

There are examples of cooperation between U.S. and Canadian fishing interests in some sectors. Canadian authorities in Nova Scotia have put in place minimum size restrictions which parallel our own. In the area of enforcement, U.S. and Cañadian authorities have taken steps to increase cooperation and reduce conflicts along the US/Canadian maritime boundary. Also, we are in the process of attempting to arrange with Canada a jointly sponsored against conference on the scientific basis for fisheries management, which we believe could be an important step in fostering better mutual understanding of each nation's management system. The U.S. approach to our fisheries relationship with Canada has been to proceed cautiously and to pursue, on a step-by-step basis, somewhat limited and hopefully achievable goals, consulting with Congress and U.S. fishing interests as we proceed. In recognition of the long term fisheries relationship which we will inevitably have with Canada, it is our view that we should keep the door open for closer cooperation on fisheries management issues in the future. In an effort to enhance such cooperation, we have proposed that the two governments meet in the near future to exchange views on a variety of fisheries matters.

The U.S. also has an important fisheries relationship with Mexico which will require more of our attention in the years ahead. Leaving aside for the moment the question of tuna, which is probably the most important aspect of our fisheries relationship with Mexico, we do have important fisheries interests in both the Gulf of Mexico and off the Pacific coast which require cooperative efforts on the part of both countries. For example, in the Gulf there are stocks of fish such as mackerel which, in effect, are shared stocks migrating throughout the 200 mile zones of both Mexico and the U.S. On the Pacific side, the same situation pertains to such fish stocks as northern anchovy and coastal migratory species which move along the coasts of both

California and Baja, California. In the long run, the U.S. and Mexico need to work closely together in order to most effectively manage these shared stocks of fish. I recently had a very productive meeting with the new Mexican Secretary of Fisheries and other Mexican officials, and we plan to have a second meeting next month.

A second broad international fisheries area which is the responsibility of the Department of State involves the conservation and management of anadromous U.S. fisheries resources beyond the U.S. 200 mile zone. Such conservation and management is, in my opinion, one of the more important purposes of the MFCMA. Our conservation efforts are complicated by the fact that foreign fleets may take U.S. origin salmon beyond the U.S. exclusive economic zone. It seems clear that a cooperative international effort is mandatory if we are to do effectively the job required of us under the MFCMA. As I noted earlier, the driftnet negotiations with Japan, Korea, and Taiwan represent one of our major efforts to address salmon management issues.

In recent years we have also been involved in other international action to conserve U.S. origin salmon on the high seas. In the early 1980s, the Department, through the International North Pacific Fisheries Commission (INPFC), raised the issue of excessive salmon harvesting by the Japanese salmon fleet. As a result, the Japanese imposed new area restrictions on their fleet in 1982 in order to reduce the interception of North American salmon. In 1986, the Department negotiated an amendment to the INPFC whereby Japan would cease fishing for salmon in the high seas area of the Bering Sea by 1994.

As noted earlier, the Department is also currently seeking new ways to cooperate with the Soviet Union towards better conservation of salmon in the North Pacific. Towards this end, we signed a Memorandum of Understanding in February of this year at the Soviet Embassy which provides for increased sharing of information and cooperative enforcement against high seas salmon poaching. This was the first US/Soviet agreement signed during the Bush Administration. The Department is continuing to explore every avenue, consistent with international law, to conserve U.S. salmon on the high seas.

I might make the observation at this point, Mr. Chairman, that it was considerably easier to deal with these management issues beyond our zone when there were U.S. fisheries resources to allocate to the foreign nations with whom we have to negotiate. A few years ago, when there were surplus U.S. fisheries available for allocation to foreign nations, we had considerable leverage with which to help us achieve our goals. Now that we do not have, and are not likely to have, any surplus U.S. fish to use as a negotiating "carrot", it is more difficult for us to persuade foreign governments to reduce their fishing or undertake other economically disadvantageous actions with regard to their fisheries beyond 200 miles. As I am sure the Chairman recalls, the U.S. "Fish and Chips" policy was an important tool in achieving our goal of full utilization and development of U.S. resources by U.S. fishermen in our EEZ. It is unclear whether under these circumstances the U.S. will be able to achieve all that it wants, but we are determined to do our best with the situation facing us.

A third broad area of international fisheries which is the responsibility of the Department of State involves the so-called distant water fisheries which are conducted by U.S. flag vessels. To a considerable extent, these activities are not really a part of the MFCMA process, although one of the MFCMA purposes is to support and encourage international fisheries agreements for the conservation and management of highly migratory species. While the U.S. has other distant water fisheries interests, tuna is the most important distant water fishery which we have. The U.S. tuna industry continues to be one of the major U.S. fishing industries and, indeed, it is one of the world's major tuna industries. The Department has expended considerable effort around the world in attempting to negotiate both conservation and access arrangements involving U.S. tuna vessels. One of our more notable recent successes was the negotiation and entry into force of the South Pacific Regional Fisheries Agreement, which provides access for the U.S. tuna fleet, for five years, to a ten million square mile area of the western Pacific Ocean. Sixteen Pacific Island countries are parties to this treaty.

In the eastern Pacific, we have been encouraged by recent developments which offer new hope for the negotiation of a comprehensive tuna management organization for the eastern tropical Pacific. The Inter-American Tropical Tuna Commission continues to do on outstanding job in monitoring the status of the tuna and porpoise stocks of the eastern tropical Pacific Ocean. In the Atlantic, we believe that the International Commission for the Conservation of Atlantic Tunas has been very effective in providing a mechanism for effective conservation and management of Atlantic tuna and billfish species.

In closing, Mr. Chairman, let me reiterate that the Department of State believes, in terms of international fisheries matters as they related to the MFCMA, that we have successfully achieved the intent of the Act and the "Americanization" of the U.S. zone. A chapter has been closed. The new chapter is evolving which will require international cooperation, albeit differently, to continue to advance U.S. fisheries interests.

Thank you Mr. Chairman.

Answers from Ambassador Wolfe to
Questions from Senator Stevens

Q. Have the US members of the working group of experts been appointed? If so, who are the members? If not, when will they be appointed, and by whom?

A. THE WORKING GROUP OF EXPERTS IS COMPRISED OF THE FOLLOWING MEMBERS:

DEPARTMENT OF STATE

JEFF MIOTKE

NATIONAL MARINE FISHERIES SERVICE

MORRIS M. PALLOZZI

MILTON M. ROSE

DEAN SWANSON

STEVE SPRINGER

COAST GUARD

CDR BILL ANDERSON

LT SCOTT BUSCHMAN

LTJG KURT COX

Q. When will the working group of experts meet?

A. THE FIRST MEETING OF THE WORKING GROUP OF EXPERTS OCCURRED ON MAY 25, 1989.

Q. Who, within the Federal Government, is responsible for implementing the MOU?

A. THE DEPARTMENT OF STATE COORDINATES THE IMPLEMENTATION PROCESS. THE LEAD ON THE TECHNICAL ISSUES IS WITH THE NATIONAL MARINE FISHERIES SERVICE, AND THE LEAD ON ENFORCEMENT MATTERS IS WITH THE COAST GUARD.

Q. Were any efforts made to contact representatives of the USSR and enlist their cooperation and assistance under the terms of the MOU when a Taiwanese driftnet squid fishing vessel was recently sighted fishing outside the squid area and pursued by Coast Guard vessels and aircraft?

A. THIS IS AN ON-GOING CASE. IN VIEW OF THE FACTS THAT THE US COAST GUARD REQUIRED NO ASSISTANCE ON THIS PARTICULAR ENFORCEMENT OPERATION AND THAT THE SOVIET UNION DOES NOT HAVE RELATIONS WITH TAIWAN NO ASSISTANCE WAS REQUESTED FROM THEM. THE STATE DEPARTMENT HAD PREPARED INSTRUCTIONS TO THE EMBASSY IN MOSCOW TO DISCUSS THE MATTER WITH THE SOVIET GOVERNMENT OF THE SITUATION, BUT WHEN THE TAIWAN VESSEL CONSENTED TO COME INTO A US PORT IT WAS DECIDED THAT THERE WAS NO NEED FOR SOVIET ASSISTANCE AT THAT TIME.

Q. Were representatives of the USSR informed of this enforcement activity pursuant to paragraph (4) of the MOU?

A SINCE THIS CASE IS STILL ON-GOING THEY HAVE NOT BEEN OFFICIALLY INFORMED OF THE DETAILS YET, BUT WE WILL INFORM THEM ONCE THE CASE HAS BEEN CONCLUDED.

Q. Will this incident involving the Taiwanese squid vessel be discussed at the upcoming US-USSR discussions as an example of an opportunity for cooperation and the need to work out detailed arrangements for implementation of the MOU?

A. THIS INCIDENT WILL BE DISCUSSED AT THE NEXT US-USSR DISCUSSIONS. THERE IS A DESIRE TO EXCHANGE DATA THAT WOULD LEAD TO MORE EFFECTIVE ENFORCEMENT BY BOTH SIDES.

Senator **Kerry**. Thank you very much, Mr. Secretary.

We are going to hold Mr. Wolfe and Mr. Douglas for now. If we need them for questions, we will come back to them.

Mr. Mitchell, would you like to lead off, or do you have an order?

Mr. **Mitchell**. We would like to show the film.

Senator **Kerry**. Fine. Now, if we could have the house lights dimmed.

Do you want to introduce this film?

STATEMENT OF KATE TROLL, EXECUTIVE DIRECTOR, SOUTHEAST ALASKA SEINERS ASSOCIATION, MEMBER, BOARD OF DIRECTORS, SEACOPS

Ms. **Troll**. Allow me to introduce it.

Senator **Kerry**. Ms. Troll, would you please.

Ms. **Troll**. My name is Kate Troll and I am the Executive Director of Southeast Seiners Association. I am also on the board of directors for SEACOPS. As such, I represent about 1700 fishermen from the Pacific Northwest.

These fishermen have worked together with Earthtrust to produce this film.

Mr. Smith just called for the need to determine the impact of the driftnet fishery. Well, we feel the impact. We know the impact. And here is some strong evidence for you to consider in asking for strong negotiations.

[Videotape shown:]

Moderator. Every night the high seas squid fleets of Taiwan, Korea and Japan set more than 30,000 miles of monofilament net in the North Pacific Ocean. End to end, that is more than enough driftnet to circle the Earth. Barely visible under water, these nets kill much more than squid. They virtually strain the top 40 feet of the ocean, entangling and killing almost every creature they encounter.

The size and efficiency of the squid fleets are astounding. During one year of operations, the amount of gillnet they deploy would span the distance between the Earth and the moon more than five times.

Without observers on board, scientists can only estimate the annual death toll. At a minimum, it includes millions of birds, tens of thousands of marine mammals, including seals, sea lions, porpoises and whales, and millions of immature salmon and steelhead.

The drift gillhead technology used by the high seas squid fleets is an extremely efficient method of harvesting seafood. Similar nets are used by inshore fishermen, but in a completely different manner. Our fishermen target mature salmon, using shallow nets in monitored areas where biologists carefully control harvests to ensure future runs.

For the U.S., the squid fishery is an economic, as well as an ecological disaster. Salmon and steelhead that support lucrative commercial and sport industries leave our rivers and streams to mature on the high seas before returning to spawn.

While the Asian fleets claim to be directing their effort towards squid, they fish in areas where the interception of American, Canadian, and Russian salmon is inevitable. Each nation has laws prohibiting their own squid boats from keeping any salmon bycatch, but direct contrary evidence places the fleets' annual salmon harvest at somewhere between 20 and 100 million pounds.

Alaska fishermen alone lost an estimated $80 million in 1988 due to the loss of our salmon to Asian squid fleets. When multiplied by the loss to seafood processors and support industries in Alaska, Washington, and Oregon, the economic damage is severe.

Clear evidence of the growth and destructive nature of the Pacific squid fishery has been apparent for years. It is now overwhelming. Since 1980, the number of vessels, average size, and amount of net fished has increased dramatically. There are now 800 to 1,000 vessels, averaging 150 feet in length, in the combined fleets of Taiwan, Korea, and Japan.

A recent Earthtrust expedition gave us the first on-board and underwater view of the squid fleet at work, when they sent divers and cameras out to the fishing grounds. What they found on the way was the striking absence of porpoises in an ocean in which they were once abundant.

Mr. LEBUDDE. One of the vessel captains who has been in this fishing since it began told us they do not kill nearly as many dolphins as they used to. In a fishery where the only changes in ten years have been the incredible growth in the size of the fleet and the amount of net that is being deployed, I think it is very easy to see why: There are simply not as many dolphins left to kill.

MODERATOR. On board, they found that the catch of species other than squid probably exceeds the catch of squid. Profitable seafood such as sailfish, tuna, salmon, and steelhead are frozen right on the ship. Non-commercial species are discarded.

Further proof of the waste of sea life caused by offshore driftnetting came from the Canadian government. After conducting a test squid fishery in their territorial waters for two years, they decided to stop the test and not to permit this fishery in Canada.

For every fish caught in the high seas squid nets, one falls out. We do not know how many of the dropouts survive. Those that do are caught in U.S. fisheries, where their market value is greatly lowered by net marks that are inflicted by the high seas nets.

Another long-term concern of high seas driftnetting is ghost fishing. The very long nets used in this fishery are easily damaged or lost in rough weather. The discarded nets continue to fish day after day and year after year.

When the net accumulates too many animals, it sinks. But as the dead carcasses rot, the net rises to the surface and begins to fish again. The cycle of death and destruction goes on long after nets have been cast off by the high seas fleets.

Recently, a Taiwanese squid ship burned and was abandoned. It drifted into U.S. waters off the coast of Washington last February, where scientific analysis found that salmon had been stored in the freezer holds. This ship arrived just one week after the National Marine Fisheries Service arrested several businessmen for illegal transshipping in the United States of 24 million pounds of immature salmon caught by the squid fleet on the high seas.

Mr. LEWIS. What these people were doing was bringing fish into the United States, falsifying documents, and then putting those with the fish as they were transported into Japan, all for the purpose of circumventing both Taiwanese and Japanese export laws.

MODERATOR. During eleven flights between June and September of last year, the Coast Guard located 93 foreign squid vessels fishing outside of agreed fishing lines. In other recent enforcement actions, eight Taiwanese vessels were found more than 400 miles north of their own authorized boundaries.

When boarded by Coast Guard personnel, one vessel abandoned its nets and had no fish lines or fish on board, including squid. The vessel had been out of port for more than three weeks and was registered as a South Pacific longliner.

Under well-established international law, high seas salmon belong to the country of origin. Squid ships from Taiwan, Korea, and Japan are stealing them on the high seas. This constitutes piracy, pure and simple.

Our domestic fishing industry depends on these fish. The continued predation by foreign vessels on our fish is not very different from the invasion and pillaging of our coastal communities.

The financial success of the squid fishery has led the Asian industry to consider introducing it into the Atlantic fishery. They are already devastating the South Pacific. We must stop the high seas squid fleets now. The Pacific Ocean cannot withstand the environmental damage inflicted by their nets. We face the collapse of the entire North Pacific ecosystem if this piracy continues.

What can we do? We can:

Enforce existing fishery, mammal and bird protection laws;

Expand the scope of items subject to economic sanction by offending nations;

Reaffirm our negotiating positions that offending nations must abandon current practices;

Develop a new regulatory convention by which the salmon nations of origin can assure the elimination of all high seas driftnet fishing that directly or incidentally takes salmon, mammals or birds;

Follow the lead of the USSR, which is taking strong action to halt all high seas fishing by 1992.

There is simply no economic or biological justification for the high seas squid fishery. Together we can stop what the U.S. and Soviets have jointly declared as wasteful and irrational.

Earthtrust is a Honolulu-based international conservation organization that focuses on marine issues.

Senator KERRY. Thank you, very much. Ms. Troll, do you want to continue now?

Ms. TROLL. Yes, just continue on.

That film was put together with the cooperation of SEACOPS, Earthtrust and Southeast Seiners. We also had assistance from the Governor's office in Alaska, so it was a joint effort in putting this together for the purpose of this hearing.

The Alaska legislature has passed several resolutions calling for the same strong actions highlighted in the film, and I have copies to present to the chair here.

In closing, I would like to emphasize a point that was brought out by Canadian research recently, and Canadian research estimates that the cessation of high seas salmon harvest could result in a 300 percent gain over that portion of the harvest now impacted by high seas fishing. This substantial increase in harvest would apply to all countries that harvest North American and Asian salmon stocks in coastal waters.

So you see, Senators, I am offering you a rare opportunity to solve a major environmental problem at virtually no cost. We do not need expensive pollution abatement, we do not need a major cleanup effort. We just need strong negotiations, and we need them right now.

Thank you.

Mr. MITCHELL. Mr. Chairman, Mr. Collier would like to go next, from Pacific Seafood Processors Association.

Senator KERRY. Mr. Collier.

STATEMENT OF BARRY COLLIER, PRESIDENT, PACIFIC SEAFOOD PROCESSORS ASSOCIATION

Mr. COLLIER. Thank you, Mr. Chairman.

For the record, my name is Barry Collier. I am President of Pacific Seafood Processors Association, a Seattle-based organization.

On behalf of the members of the association, I want to say how anxious we have been to have an opportunity to discuss the high seas driftnet fishing issue in a public forum such as this. We are at a particularly critical stage in the development of the United States policy on the issue of driftnet fishing.

First, as you are all aware, there is a pending agreement with Japan regarding driftnets which the State and Commerce Departments have under internal review. PSPA, as is stated in our recently adopted resolution attached to our testimony, feels that this agreement is completely insufficient as a means for reaching our goal of eliminating the use of highly destructive pelagic driftnets.

It is our view that, regardless of whether the United States and Japan agreement is signed, we should immediately begin seeking another means of accomplishing cur ultimate goal of eliminating driftnets in as short a time as possible. The current agreement is not this vehicle.

Another reason why this is an important juncture is that we are at the high water mark in terms of both public and Congressional concern about the use of driftnets. At this point it is appropriate to express our thanks to the many members of the Senate and the House who have been out in front on this issue, in particular the members of the Northwest and Alaska Congressional delegations.

Through your sponsorship of the Driftnet Act and through your continuing efforts to publicize the matter and press the Administration for action, you have helped to move driftnets higher on the national agenda of environmental issues.

Our allies in the environmental community have been helpful on this front as well. In the last few months, we have seen stories by all major print and electronic media organizations in the Northwest and Alaska.

Beyond this, we are starting to see national attention. There have been stories by Cable News Network, National Public Radio, the New York Times, the Wall Street Journal, and even this week's People Magazine.

One of the most positive results of the increasing attention given to the driftnet issue during the past few years has been the enactment of the Driftnet Monitoring, Assessment, and Control Act of 1987. This statute, which became law on December 29th, 1987, requires the Federal government to do the following:

The Act called for the negotiation with driftnet fishing nations of two types of agreements: one, a monitoring agreement; and two, an enforcement agreement. The former was to provide statistically reliable data on the impact which driftnet fishing is having on the marine resources of the United States. The latter was to provide for the effective monitoring and detection of violations, as well as information on the extent of prosecutions and penalties assessed as a result of this illegal fishing.

These monitoring and enforcement agreements are due by June 29th of this year. At this stage there is only one nation with which a tentative agreement has been negotiated, and we all know that is Japan. Although there have been talks with Taiwan, it does not appear that we are close to an agreement at this point. In the case of South Korea, talks have not yet begun.

It is our understanding that the Japanese negotiators agreed with us during the talks that the nations which are causing the real problems in regard to salmon interceptions are Taiwan and South Korea. Since this is generally accepted to be the case, and if Japan has nothing to hide in terms of high seas driftnet operations, then why would they not agree to placement of some type of electronic position-fixing transmitters on board their vessels? This would have set a very useful precedent for the agreements still to be negotiated with Taiwan and South Korea, and would have enabled us to get effective control on all the fleets.

We continue to feel that this is the only form of effective enforcement in preventing the current massive interceptions of our salmon in the areas of the North Pacific far outside the legal squid fishing zone.

Another item of interest which we wish to present is a report circulated by the group Earthtrust. This is the organization which prepared the informational videotape on driftnetting which many members of Congress have seen. This report is a summary of the data collected by an observer aboard a Japanese driftnet vessel operating an experimental high seas fishery in the South Pacific.

We have attached the report [1] to our testimony, with the permission of Earthtrust, but I would like to provide a quick summary of this observer information.

Please note that the fishing methods used are very similar to the North Pacific, except they used shorter nets.

During the 30-day experimental fishery the following were caught in addition to the target species of fish: 11 whales, three of which were processed on board the vessel, 97 dolphins, and 10 turtles.

A large section of gillnet was also lost when it had to be cut away after snagging on the propeller. As we all know, these become ghost nets and continue to fish for years to come.

The report also provides details on the indiscriminate and wasteful nature of high seas driftnetting and, although the species involved are different, there is no reason to believe that driftnets in the North Pacific are any less destructive than these identified in the report.

Before concluding, I would like to offer several suggestions regarding actions which Congress might take to accelerate the pace at which meaningful restrictions are placed on driftnets:

First, in terms of the Magnuson Act, we suggest that penalties provided under that Act be increased.

Second, we would also like Congress to consider adding some language to reinforce our jurisdiction over anadromous species which originate in the United States.

Third, another enforcement measure which should be considered has to do with the constraints under which the Coast Guard currently must operate in attempting to enforce U.S. laws in this area. It would make the Coast Guard's enforcement burden lighter if aerial photos could be used as evidence to prove illegal fishing on the high seas.

Fourth, we should also explore the possibility of adopting the principle of presumptive boarding as another means of assisting the Coast Guard enforcement efforts.

Fifth, we would like to make another plea for the assistance of the Defense Department. We have been attempting for many years, without success, to get the Defense Department to share reconnaissance data with the Coast Guard, and we must once again make the argument that the confidential sharing of such data would assist the Coast Guard.

Sixth, during the last few years there has been an ongoing debate about expanding the sanctions available to the President under the Pelly Amendment. We would like to offer our support again for this measure.

Finally, and most importantly, we urge the Administration to keep up its negotiations with the other nations of the North Pacific on the possibility of setting up a multilateral framework for regulating all high seas fisheries in the North Pacific. It may well be that this option holds the most promise for making real progress on the driftnet issue.

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[1] The report was retained in the Committee files.

Thank you again for allowing us to submit our testimony and also the verbal comments today.

[The statement follows:]

STATEMENT OF BARRY D. COLLIER, PRESIDENT, PACIFIC SEAFOOD PROCESSORS ASSN.

My name is Barry D. Collier. I am the President of the Pacific Seafood Processors Association (PSPA).

The Association is based in Seattle, Washington and represents companies involved in seafood processing in the states of Alaska, Washington and Oregon. The member firms which comprise PSPA produce a wide variety of products, including salmon, crab, shrimp and numerous species of groundfish. This final category includes the companies which have pioneered the domestic surimi industry and which have replaced the huge foreign fleets which had formerly dominated the utilization of much of the marine resource off the U.S. west coast.

The Association provides a forum for communication and action by the members on matters of common concern, as well as providing input to federal, state and local decisionmakers. I'm pleased to say that PSPA is celebrating its 75th anniversary this year, which makes us the oldest fishery trade association in the Northwest and one of the oldest in the nation.

On behalf of the members of the association I want to say how anxious we have been to have an opportunity to discuss the high seas driftnet fishing issue in a public forum such as this. We are at a particularly critical stage in the development of a United States policy position on the issue of driftnet fishing and the problems it causes in our ecosystem. I say this is a critical time for several reasons. First, as you are all aware, there is a pending agreement with Japan regarding driftnets which the State and Commerce Departments have under internal review. PSPA, as is stated in the recently adopted resolution attached to our testimony, feels that this agreement is completely insufficent as the means for reaching our goal of eliminating the use of highly destructive pelagic driftnets.

It is our view that regardless of whether the United States - Japan agreement is signed we should immediately begin seeking another means of accomplishing our ultimate goal of eliminating driftnets in as short a time as possible. The current agreement is not that vehicle and is likely to simply lead to many years of additional negotiations during which time the marine resources of the North Pacific will continue to be indiscriminately killed.

There are other reasons which make this a critical time in the history of the driftnet issue. These fisheries in the North Pacific have been expanding at an extremely rapid pace during the past decade. We have reached a point where we must either turn the tide or face very serious biological impacts on our stocks of salmon as well as on marine mammals, seabirds and other marine life. We do not have a great deal of time in which to act.

Another reason why this is an important juncture is that we are at the high water mark in terms of both public and Congressional concern about the use of driftnets. At this point it is appropriate to express our thanks to the many members of the Senate and House who have been out in front on this issue; in particular the members of the Northwest and Alaska Congressional delegations. Through your sponsorship of the Driftnet Act, and through your continuing efforts to publicize the matter and press the Administration for action, you have helped to move driftnets higher on the national agenda of environmental issues.

Our allies in the environmental community have been particularly helpful on this front. In the last few months we have seen stories by all of the major print and electronic media organizations in the Northwest and Alaska. And beyond this we are starting to see nationwide attention. There have been stories by the Cable News Network, National Public Radio, The New York Times, the Wall Street Journal, and even in this week's People Magazine.

It would be a major mistake, in our opinion, if we did not take advantage of this growing media attention in order to bring increasing awareness to what is, by anyones standards, a major international environmental issue. We have no doubt that the more the public learns about the use of driftnets in the North Pacific and elsewhere, the louder the calls will become for their strict regulation and eventual elimination.

All members of the Committee have been provided with a copy of an extensive document which PSPA put together earlier this year to help explain the history and scope of the driftnet problem. Without going into a great deal of detail about the contents of this document, I would like to simply point out a few of the items it contains.

First, it shows that this is not a new issue. There are articles from Alaskan fishery trade journals during the mid-1930's which discuss Japanese interceptions of United States origin salmon only thirty miles off the Alaskan coast. There are numerous other articles in which allegations are made and evidence provided that Taiwan, Japan and South Korea are in the business of actively and intentionally harvesting U.S. origin salmon on the high seas.

One of the reasons why the members of PSPA find this issue so frustrating, aside from the fact that it has been occuring for so long, is that in the normal course of doing business they frequently come across formal offers to sell salmon which has obviously been taken on the high seas in an illegal fishery. If you page through the document we have provided you will see numerous copies of telexes in which North American salmon, admittedly caught in the high seas squid or other fisheries, are offered for sale. In fact, some of the companies involved in these operations are so blatant as to actually take orders prior to the "season" so that they will be able to have a ready market after the illegal fishing operations conclude. For those of us who are fishing in compliance with both domestic and international regulations governing salmon fisheries, you can imagine the anger which results from seeing illegally caught fish freely and openly marketed in competition with our product. This is the most immediate problem we seek to correct, especially in light of the fact that we are already seeing sharp decreases in returns of salmon to Alaska which do not seem to be explainable other than as a result of foreign interceptions.

One of the most positive results of the increasing attention given to the driftnet issue during the past few years was the enactment of the Driftnet Impact Monitoring, Assessment and Control Act of 1987. This statute, which became law on December 29, 1987, requires the federal government to do several things. First, a report was required by December 29, 1988 which was to outline the nature, extent and effects of driftnet fishing in the waters of the North Pacific ocean. It is our understanding that this report has just recently been released and we have not yet had a chance to review it.

Second, the Act called for the negotiation with driftnet fishing nations of two types of agreements: monitoring agreements and enforcements agreements. The former was to provide "statistically reliable" data on the impact which driftnet fishing is having on the marine resources of the United States. The latter was to provide for "the effective monitoring and detection of violations," as well as information on the extent of prosecutions and penalties assessed as a result of illegal driftnet fishing operations.

These monitoring and enforcement agreements are due by June 29 of this year. At this stage, the only nation with which a tentative agreement has been negotiated is Japan. Although there have been talks with Taiwan, it does not appear that we are close to an agreement at this point. In the case of South Korea, talks have not yet begun.

As I mentioned earlier, our basic problem with the tentative United States - Japan agreement is that it simply won't accomplish our most fundamental objective; namely, the elimination of driftnets from the high seas. It is arguable as to whether or not it even gives us a start toward that objective, but regardless of the answer to that question, the fact remains that we do not want to head down a road of endless negotiations only to find that the stocks we're trying to protect have been decimated by the time we reach an acceptable conclusion. We must find an alternative which will get us where we want to go, and we ask that Congress and the Administration begin this process immediately. We cannot wait until the year 2000 to find a solution to this problem.

It is our understanding that the Japanese negotiators agreed with us during the talks that the nations which are causing the real problems in regard to salmon interceptions are Taiwan and South Korea. Since this is generally accepted to be the case, and if Japan has nothing to hide in terms of its high seas driftnetting operations, then why wouldn't they agree to the placement of some type of electronic, position-fixing transmitters onboard their vessels? This would have set a very useful precedent for the agreements still to be negotiated with Taiwan and South Korea and would have enabled us to get effective control on all the fleets. We continue to feel that this is the only form of effective enforcement in preventing the current massive interceptions of our salmon in areas of the North Pacific far outside the legal squid fishing zone.

Before getting to our specific recommendations there are two more points I would like to make. It is a shame, we feel, that the driftnet problem was ever permitted to get this bad and that we are now trying to eliminate a fleet of nearly 1,000 boats, many of which are targeting U.S. salmon. In preparing this testimony I had a chance to review our last two congressional presentations on this issue in 1985 and 1987. At each of those hearings we called for strong and timely action and we heard representatives of the Administration say that they were committed to addressing the problem. On each occassion we felt that we had made a start toward solving the problem only to find that there was little substance behind the commitments of the Administration witnesses. Two more years have now passed since the last hearing and the only reason we have come as far as we have is due to the pressure which publicity, Congressional interest, and the Driftnet Act have brought to bear. We must move beyond the "business as usual" response this time with some type of dramatic new intitiative which will take us far beyond our efforts to date which have amounted to nothing more than nibbling around the edges of this issue.

Another item of interest which we wish to present is a report circulated by the group Earthtrust. This is the organization which prepared the informational videotape on driftnetting which many members of Congress have seen. This new report is a summary of the data collected by an observer aboard a Japanese driftnet vessel operating in an experimental fishery in the South Pacific. We have attached the report to our testimony, with the permission of Earthtrust, but I would like to provide a quick summary of this observer data. Please note that the fishing methods used are very similar to those in the North Pacific except for shorter nets. During the 30 day experimental fishery the following were caught in addition to target species of fish: 11 whales (3 brought aboard for processing); 97 dolphin; and 10 turtles. A large section of gillnet was also lost when it had to be cut away after snagging on the propeller. (This becomes what is termed "ghost-net," and it continues to fish.) The report also provides details on the indiscriminate and wasteful nature of driftnetting, and, although the species involved are different, there is no reason to believe that driftnets in the North Pacific are any less destructive than those described in this report.

Before concluding, I would like to offer several suggestions regarding actions which Congress might take to accelerate the pace at which meaningful restrictions are placed on driftnets. In terms of the Magnuson Act, we suggest that the penalties provided for be increased. This would help us in several areas where we are having trouble reducing the number of MFCMA infractions by foreign nations, such as illegal fishing in U.S. waters near the "doughnut hole" in the Bering sea.

We would also like Congress to consider adding some language to reinforce our assertion of jurisdiction over anadromous species which originate in the United States. At the present time, we claim the right to manage these stocks, but we have not been willing to really enforce that right in cases where other nations are intentionally and illegally harvesting our salmon.

Another enforcement measure which should be considered has to do with the constraints under which the Coast Guard currently must operate in attempting to enforce U.S. laws in this area. It would make the Coast Guard's enforcement burden lighter if aerial photos could be used as evidence to prove illegal fishing on the high seas. Currently, they must attempt to stop the offending vessel, gain permission to board (which sometimes takes several days) and then find the evidence of illegal fishing. In many cases this evidence has already been disposed of, as in the recent Taiwanese case involving the Coast Guard cutter Jarvis. We should also explore the possibility of adopting the principle of "presumptive boarding" as another means of assisting with Coast Guard enforcement efforts. What we mean by presumptive boarding is that the Coast Guard would have standing authority to board a foreign fishing vessel on the high seas if it is fishing in an area for which it does not have a legal permit, and if it is in an area where it could be presumed to be taking salmon of United States origin.

In addition, we would like to make another plea for the assistance of the Defense Department. We realize that we have been attempting for many years without success to get the Defense Department to share reconnaisance data with the Coast Guard, but we must once again make the argument that the confidential sharing of such data would assist the Coast Guard immeasurably in monitoring the vast reaches of the North Pacific and would not compromise security since the information would remain in the hands of the armed forces.

During the last few years there has been an ongoing debate about expanding the sanctions available to the President under the Pelly amendment to the Fishermen's Protective Act. We would again like to offer our support for this step. Although fishery product embargoes are a strong deterrent in the case of some nations, in many situations this is not sufficient. If the Pelly amendment could be expanded to give the President the option of embargoing any product from an offending nation then we would have a much stronger and more effective tool.

Another possible Congressional action would be to re-examine the Driftnet Act itself and see if there might not be changes which could be made which would strengthen this law. The Act has been effective in bringing the three nations involved to the bargaining table, but it does not appear that the standards which it set are high enough to have any real impact in the short term.

Finally, and most importantly, we urge the Administration to keep up its negotiations with the other nations of the North Pacific on the possibility of setting up a multi-lateral framework for regulating all high-seas fisheries in the North Pacific. Cooperation is preferrable to confrontation, but only when it is sufficiently organized and regulated so as to insure compliance with the rules the group has set. We believe that such an organization is possible, and we ask that its creation continue to be pursued. It may well be that this option holds the most promise for making real progress on the driftnet issue.

Thank you very much for the opportunity to appear today. I'd be glad to answer any questions.

Senator KERRY. Thank you very much, Mr. Collier.

Mr. Mitchell.

STATEMENT OF HENRY MITCHELL, EXECUTIVE DIRECTOR, BERING SEA FISHERMEN'S ASSOCIATION

Mr. MITCHELL. Mr. Chairman, Senator Stevens:

It is a pleasure to be here. I represent the Bering Sea Fishermen's Association, which has over 1500 members who fish primarily in western Alaska. About 85 percent of them are Upik Eskimoes that live in small villages.

My members have always been concerned with not only the capture of salmon by the directed salmon fleets, but also with the squid fishery when we learned in 1981 it was becoming a problem.

Additionally, I am here today representing the United Fishermen of Alaska, which is a coastwide fishermen's association representing not only Alaska resident fishermen, but also fishermen from Oregon, Washington, and California who fish in Alaska waters in the summer. Those 18,000 individuals are very, very concerned about this issue and have been for many years.

I have participated in these negotiations and other negotiations and am very familiar with all the various interception problems that the Japanese, the Taiwanese, and Koreans have caused, not only through these fleets, but also through their trawl activities in the North Pacific and Bering Sea for the last ten years.

This agreement is basically not going to do the job. We feel it does not meet the requirements of the Act. The information that you are being promised is basically not going to be usable for the purposes of doing much in future years as far as better negotiations with the Japanese.

The fact that the Japanese will not take transponders is significant. Without transponders, you do not have another way of independently verifying whether the unobserved portion of the fleet is fishing in a different pattern from the observed portion of the fleet.

Now, it is true, as Mr. Smith points out, that this information is more information than we have had in the past. Unfortunately, it is my view and the view of all the major fishing associations that that information will be manipulated.

In other words, the books will be cooked by the Japanese. They have had a history of doing this. When we had 100 percent observer coverage on their vessels fishing in the Bering Sea under the jurisdiction of the North Pacific Council, 100 percent observer coverage, 20 to 30 percent of the resource, the quota, was being stolen.

This was confirmed in 1984. They do not have a good record of providing valid information to us. We had a history of observers, four observers on their mothership fleet operating in U.S. waters of the Bering Sea. That is a directed salmon fleet.

In the early eighties, the Japanese promised to stay below a certain number of king salmon because of the impacts taking larger numbers would have on our fisheries. They did not. It was discovered later on statistically that in fact they were counting one species of salmon as another.

I hate to report it. We had looked forward to a good agreement, one that would be useful. It is clearly inadequate and we fear that the information will be used against us in future years to provide the Japanese with the justification that they are taking no salmon.

I have to be very specific here, and I know that some people will not believe this, but the Japanese have the ability not only to find that salmon in certain areas—they have a long history. They have over 50 or 60 years of experience.

Their salmon fleet masters know basically the general movements of those salmon on a weekly and monthly basis. And the reason that we are having such a big problem, not only with the Taiwanese and the Koreans, but with the Japanese, is that over 300 of the vessels that are currently fishing in the squid fleet are vessels that were phased out of their salmon fleet.

Those people not only have the institutional memory of where the salmon go, but they also have the institutional arrangements and a long history of being able to market those fish through whatever legal or illegal channels are available.

I clearly think that the step now is not certification, but to move forward with another aggressive set of negotiations. I think that Secretary Baker and Secretary Mosbacher should call their counterparts, inform them of the seriousness of the situation, the growing public concern, the fact that this is an economic problem for the United States, it is an ecological problem of significant magnitudes, and that these negotiations should be reopened.

We have until the 29th. There is significant time here to get the Japanese back to the table and get a significant program going.

People will tell you we do not have time, that we will not get the observers out there. If in fact we do this here in the next two weeks, I think we will come up with a good agreement and one that is meaningful, and we can get those observers out there. We can get the Coast Guard to take them out and drop them off and deploy them.

You know, I have heard excuse after excuse on this. But the time to act on this is now, and it has to be very firmly done. It takes bold and decisive action, the words that Senator Kerry used this morning.

This is a huge problem, one that, if not solved, will have serious, serious ramifications, not only on the commercial industry in Alaska and the Pacific Northwest, but on marine mammals and sea birds into the next century.

Thank you very much.

[The statement follows:]

STATEMENT OF HENRY V.E. MITCHELL, ON BEHALF OF THE BERING SEA FISHERMEN'S ASSN. AND THE UNITED FISHERMEN OF ALASKA

I am Henry Mitchell, Executive Director of the Bering Sea Fishermen's Association (BSFA), with headquarters located in Anchorage, Alaska. I am also on the Board of Directors and the Executive Committee of the United Fishermen of Alaska (UFA), with headquarters in Juneau, Alaska. For the record, I am a member of the North Pacific Fisheries Management Council, the Advisory Panel of the International North Pacific Fisheries Commission, the Advisory Panel of the Yukon Salmon Treaty talks and the US/USSR North Pacific and Bering Sea Fisheries Advisory Panel. I am here to testify today on the problem of high seas interception of salmon of North American origin and the reauthorization of the Magnuson Act, on behalf of BSFA and UFA.

BSFA is a commercial fishing organization representing some 1,500 Western Alaska residents who traditionally fish for salmon and herring from small boats. The region of Alaska that BSFA represents consists of the coastline starting from the North with Kotzebue and Nome and running south through Bristol Bay. This area includes the fisheries of the Kuskokwim, the Upper Yukon, the Lower Yukon, Norton Sound and Kotzebue--all relatively small and conducted primarily by Alaska Natives--as well as the valuable fisheries of Bristol Bay. Incomes throughout much of this area are among the lowest in the nation. Most of the commercial fishermen of the area also conduct subsistence fisheries for salmon to provide their families with food for the year.

UFA is a private, non-profit, statewide organization for 23 local fishermen's associations, including marketing and aquaculture organizations and specific gear groups. Including its individual members, UFA has a total representation of some 18,000 commercial fishermen from Alaska, Washington, Oregon and California, all of whom fish in Alaskan waters. It may help you to know that our member groups are based in Bellingham, Seattle and Tacoma, Washington, Warrenton, Oregon, and Sitka, Ketchikan, Petersburg, Juneau, Cordova, Anchorage, Soldotna, Kenai, Homer, Sand Point, and Dillingham, Alaska.

High seas interceptions, primarily by the Japanese, Taiwanese and Koreans, by their directed fisheries and as a bycatch in their squid and other fisheries conducted with monofilament drift gillnet in the North Pacific Ocean, is in no way a new issue to the fishermen of Alaska. It is a problem many of us representing Western Alaska fishermen and processors have raised for at least the past ten years in public fora. I personally appeared before Congress several years ago asking for assistance from the Congress; other members of UFA have done the same. As the size and nature of the problem have been unveiled, and as the impact on fisheries has been identified all along the Alaska coastline and among the salmon and steelhead fishermen of Washington, Oregon, Idaho and California, you have heard from increasing numbers of fishermen and processors that an end to the problem is needed. An entire organization dedicated solely to the issue of high seas interception, SEACOPS, has been established and has committed a substantial amount of effort to eliminate interceptions in the past year.

As our information on impacts improves, as the Coast Guard increases its monitoring and enforcement efforts, and as the size of the fleets from Japan, Korea and Taiwan increases, our estimates of the amount of salmon taken on the high seas by the drift gillnet fleet have increased substantially. We now believe as many as 100,000,000 salmon of North American origin do not make it into our waters annually, due to the direct capture and harvest in the high seas gillnets, as well as to "drop out" and "ghost fishing" (once nets are abandoned at sea). That is a staggering loss to our fishermen, to our processors, and to the fishing communities throughout Alaska and in the Pacific Northwest, to say nothing of the impact on our national revenue and trade balance posture. I have seen estimates of overall loss of one billion dollars annually.

Congress has taken several actions on this problem in response to our protests. You have encouraged the Coast Guard to increase its surveillance and enforcement. You have enacted an advisory group made up of industry representatives to consult with the State Department on the US/USSR talks, in light of our observation that the Soviets seem to take a strong approach to the high seas theft of their fish. You have helped us encourage our diplomats to negotiate tougher agreements with nations conducting high seas driftnet fisheries, in large part under the auspices of the Driftnet Impact Monitoring, Assessment, and Control Act that you passed in 1987. Many of you have dedicated substantial amounts of your time to a number of aspects related to this matter.

Unfortunately, comprehensive, effective solutions to the problem do not appear to be readily at hand. I think in large part that may well be because there does not appear to be a comprehensive, effective strategy in place which the Administration is following to achieve our nation's stated goal of eliminating high seas interceptions. Rather, I am afraid that the commercial aspects of our "problem" are caught up (hence, diminished) in the larger category of "trade problems." On the diplomatic side, it seems that negotiations are conducted in isolation rather than as a part of a comprehensive strategy, using all available elements of leverage and conducting, simultaneously, multiple bi-lateral discussions. Further, I am quite disturbed by the amount of time it has taken to pursue the strong interest of the Soviets (shared by the North Pacific seafood industry) in advancing more quickly a new multilateral, nation of origin convention for the North Pacific. Finally, we are adversely affected by the nemesis of budget constraints (an area in which we have a lot of company) in getting necessary additional surveillance and enforcement coverage.

While not all of these matters may be completely within the jurisdiction of the Senate Commerce Committee, the issue is of grave importance to a number of members of the Committee, and the Committee has been consistent in its interest and activity with regard to high seas interceptions. I would like to focus on two important aspects of the comprehensive solution needed to resolve this problem now: the need for corrective amendments to the Magnuson Act as part of your efforts to reauthorize the Act; and the adequacy (under the Driftnet Act) of the agreement recently negotiated with the Japanese.

Let me begin with the adequacy of the agreement with the

Japanese. As I mentioned, I have been an industry advisor during the length of these talks, and have participated directly in negotiating sessions here and in Tokyo. Along with other advisors representing harvesting and processing interests in Alaska, I have very much wanted an agreement with each of the high seas drift gillnet nations in order to get better information and control over those nations' activities. After all, BSFA and UFA, along with the Pacific Seafood Processors, were in the forefront of the efforts to seek adoption of the Driftnet Act by Congress.

While the agreement with the Government of Japan being reviewed by the Commerce Department may have some good aspects, my associations do not believe it is adequate under the Driftnet Act. That is, after all, the test that must be applied to the agreement. (I am concerned that the extant test has been whether the agreement is a good first step and whether it is adequate to keep the Japanese coming back to the table next year. No place in the Act do I find that standard.) We believe it is worse than no agreement at all, because it sets an inappropriate and inadequate standard by which all future negotiations will be conducted. We urge the Commerce Department to make that finding promptly. I have every reason to believe that such action, communicated by the State Department promptly with a call for immediate additional talks, could lead to an agreement acceptable under the Driftnet Act yet this year.

Let me first state that the initial concern with the agreement is the implied acceptance of the Japanese unilateral decision to move the squid line north by as much as two degrees. The State Department's response was that there was nothing we could do about that, since we do not have jurisdiction over the squid vessels. We argue that there should have been no acceptance of this unilateral action, under our law and under international law.

Why do BSFA and UFA find the agreement inadequate under the Driftnet Act? The Act says that adequate monitoring agreements are ones that provide:

> "statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's drift net fishing vessels.."

The Act further states that sufficient vessels will be provided so that statistically reliable information will be observed and gathered. We do not believe the agreement meets that test, for a number of reasons:

* there is an insufficient number of observers.

-In the **large mesh fishery** there is one observer; in the **directed salmon fishery** there are none. These are covered by the Driftnet Act. There are as many as 400 vessels in these fleets.

-In the area **south** of the squid line, there is only a pilot program, providing few observers. The rationale is that we are not sure how to establish a statistically reliable program at this time. That is an admission that the agreement does not meet the standards of the Act in this instance. It is also wrong. Our country and our industry have been designing observer programs for a long time in all types of fisheries and with regard to other marine resources. The real reason the number is so low is that the Japanese would agree to nothing higher, which is not a defense to entering into an inadequate monitoring agreement.

-In the northern area, we are told that we will get some 19 to 20% observer coverage from the 22 observers to be placed on vessels fishing north. There is no mechanism to control how many vessels fish north. Instead, we are relying on information provided by the Japanese on their best estimate of how many will fish North. If more vessels fish North than estimated, the percentage coverage will naturally drop. If that occurred, would NOAA scientists feel comfortable with the coverage?

* there is no guaranteed method of placing observers to assure randomness--to assure that observed vessels will fish in the same area as non-observed vessels. This is a critical deficiency. The Driftnet Act does not call for obtaining just any kind of data. It must be reliable, verifiable, useful data indicative of general fishing activity. In previous experiences with the Japanese, observed vessels have been sent in different directions from non-observed vessels, and catch has been shared with the sacrificial, observed vessels. For that reason, our associations have always insisted on methods to assure randomness, with the backup of **transponders** to pin-point vessel location on a real time basis.

Historical information on locations presented to us in 1990 will do us no good during the 1989 fishing season.

* there will be an insufficient amount and quality of data obtained, because of the deficiencies of the program. There will be data of suspect, confused quality derived by the program, for the reasons stated above. In addition, the lion's share of the observers will be Japanesen. In previous experiences with observer programs, we have found that two sets of books have been maintained, one with real figures, the other with the figures used to show that no problem exists. There is no mechanism to prevent this from occurring. This is even more critical because:

-the rationale for the " pilot program" in the south is that we need one year's data so that we can design an expanded program next year; and

-the rationale for the larger observer program in the north is to show interaction with salmon, hence allowing for assertions that further movement north is justified if salmon interactions are minimal.

* there will be insufficient data collected on the impact of high seas drift gillnets on marine mammals and seabirds. Only the North American observers will collect such data at all times under the agreement. Hence, the vast majority of the observers will not collect important mammal and bird data. The Driftnet Act is not restricted to gathering data on salmon interceptions. On the contrary, we believe the high seas fleets have a dramatic impact on the health of the mammal and bird stocks.

The American fishing industry just agreed to a vastly expanded marine mammal observation and conservation program, passed out of this Committee only last year, to determine where the problems are with regard to interactions between mammals and commercial fishing. Isn't it curious that commercial fishermen from Alaska, Washington, California and Oregon will be subject to substantial scrutiny (at least 20% observer coverage in "problem fisheries") when the Japanese fleet, thought to take substantially greater numbers of mammals, will go mostly unobserved?

Other problems with the observer program exist as well, including such aspects as communications with shore or US vessels. I can expand upon them in response to questions, if you wish.

In sum, from the standpoint of monitoring, we believe the agreement to be worse than no agreement, because of the prospect for lack of reliable and accurate (truthful) data. Scientists that we work with believe the program is not statistically reliable. NOAA scientists themselves have told us we cannot trust programs of this nature.

The Driftnet Act requires effective enforcement, as well. Under this agreement, the United States and Canada will take no enforcement action at all. We are allowed to have an observer on board one Japanese enforcement vessel. Granted, the Japanese will increase their enforcement coverage some 350 vessel days during the season, but there are no guarantees of numbers of boardings of fishing vessels by the enforcement vessels, nor are there solid guarantees of where these enforcement vessels will operate. While we understand that the Coast Guard will conduct some enforcement this year, that will apparently not be in conjunction with the Driftnet Act. It is hard to comprehend how this constitutes "effective enforcement" if we play no part in enforcement under the Act.

Suffice it to say that this is not what we contemplated when we sought Congressional action on driftnets three years ago. We believe the State Department can --and must-- do better this year. In our view, the Commerce Department must uphold the sanctity of the Driftnet Act and our nation's policy against driftnet fishing (stated recently in an MOU with the USSR as "wasteful" and "inefficient") by finding this agreement inadequate. The State Department needs to go back to the table immediately. Only after rigorous negotiation on the deficient points can we determine how successful additional talks will be. If we have a further lack of success in correcting these deficiencies, then appropriate steps should be taken under the Act.

Let me expand briefly on one point raised earlier -- the question of a comprehensive strategy implemented on parallel tracks, rather than in series. BSFA and UFA have participated in several exercises along these lines, both at the state and national level. At the state level, both an industry working group and the Governor's High Seas Task Force have developed expanded strategies that join elements of:

* clearly enunciating national policy on high seas drift gillnet fishing and a date certain by which we want such fishing practices halted;

* additional funding needs for the Coast Guard;

* better cooperation among federal entities with surveillance capabilities;

* greater surveillance and enforcement by the Coast Guard and other elements of the Armed Services;

* implementation of the MOU recently entered into with the Soviets, so that there is joint surveillance and enforcement **beginning this year**;

* increasing the interest and intensity of negotiations with the Soviets for further cooperation, as well as our discussions with them generally as to their methods of protecting their own salmon stocks from the high seas drift gillnet fishing nations;

* increasing our interest in entering into a new, nation of origin convention for the North Pacific, including the Soviets. This has been a top priority of the Advisory Panel on the US/USSR negotiations, and counsel to BSFA and UFA member groups, along with the State of Alaska, have drafted such a convention for submittal to the Soviets at the next talks. Will the State Department have clearance to present this to the Soviets?

* explore other trade approaches, such as 301 actions and pursuing listing of offending nations under super 301 of the new trade act;

* seeking corrective amendments to the Magnuson Act during this reauthorization period to help effectuate strategies on high seas interceptions, including:

--a Congressional finding that **high seas drift gillnetting** that takes directly, or as bycatch, salmon, mammals and birds associated with North America (and, under our MOU for cooperative action with the Soviets, the USSR) **must cease by 1992**;

--direction to the Secretary of State to develop a new international nation of origin convention with at least Japan, the USSR, and Canada as members, by 1992;

--establishment, through science, "**salmon zones**" to identify where our (and, under our MOU for cooperative action with the USSR, the Soviet origin) salmon are likely to be beyond our 200 mile zone(s).

--adoption of a **rebuttable presumption** that salmon found on board vessels in these areas are of North American (or Soviet) origin.

-- requirement of transponders of vessels fishing in salmon zones;

--expansion of coverage under the **Pelly Amendment** to include all products, not just those of marine origin;

--direction to intelligence agencies to work out **a cooperative information sharing agreement** with the Coast Guard, to further the gathering of information on location of foreign drift gillnet vessels.

A number of members of and advisors to BSFA and UFA, in addition to myself, have spent a substantial amount of time with members of this Committee, their staff and Committee staff in developing similar strategies and implementation methods over the years. Many of you have helped us get our points across to the various departments involved in these matters, sometimes as interpreters and liaison, sometimes running interference, sometimes as "great communicators" of Congressional intent in this area. We greatly appreciate your efforts to date, including this opportunity to give you our views on the progress under the Driftnet Act. We look forward to continuing our cooperative working relationship with you as we move toward elimination of the destructive practices of the multi-nation high seas drift gillnet fleet.

Thank you.

Senator KERRY. Mr. Mitchell, I thank you very much, and I thank all the members of the panel. I am particularly happy because I think it is helpful to us as a committee in exploring these issues to really have you there together and to talk about these things.

Now, Mr. Secretary, based on the testimony, the film, the contentiousness of this issue, the significant questions raised, and the attitude expressed by Senator Packwood, Senator Stevens, Senator Gorton, and others, there is obviously a big question mark here.

I suppose, apart from the sufficiency or insufficiency of the agreement as you see it, the initial question is—should we be negotiating an agreement which involves transponders and observers, or should we be looking for the phasing out and indeed banning of this particular form of fishing?

Mr. SMITH. Mr. Chairman, I do not think they are mutually exclusive. As a matter of fact, one of the reasons why it has been so difficult to get Japan to agree to such an extensive observer and enforcement package is that they recognize, and my counterpart has told me that he fears, that the information that will be gathered by the three countries working together with their observers will lead to the beginning of the end of that driftnet fleet, and that concerns them.

I think that the things that are accomplished by this agreement, which gets us an order of magnitude more information than we have ever had before on these driftnet fleets, are the key to making the case that this method of fishing has to be looked at very seriously and perhaps ended.

Senator KERRY. You believe the information is insufficient to do that now?

Mr. SMITH. Yes. I think that what we need—in order to make the case effectively, is an extensive observer program. That is what the Driftnet Act called for. That is what we have negotiated.

The scientists who were with me—this included both NMFS scientists and a scientist from the Marine Mammal Commission—are very pleased with the agreement. Basically, it represents the position that we had prepared.

The issue—I am taking a little more time, but the issue is important, I think, to focus on is that the position taken by these scientists is that you need to begin with a program of this kind. You cannot achieve all of the information you need on all of the fleets the first year.

What we have done is engaged Japan in a process. We have gotten a program which gets us more information than we have ever had before, and also it commits Japan to consider further and broader programs in 1990. It is the path of cooperation.

I recognize the frustration and anger here. In fact, one of the advisors on my delegation—a person who represents a lot of Alaskan fisheries interests (not Henry) told me about this anger and this frustration when I first began this process.

He said: You have got to remember, the people I represent really are not that interested in agreements; they want retribution, they want a war. Well, that war is available and we may end up with such an exchange in the trade area.

But I would just submit that the first body bag in that war will carry the remains of the best observer and enforcement agreement we have ever had and information that is invaluable to us on the operations of those driftnet fleets.

Senator **Kerry**. Let me ask Mr. Mitchell and Ms. Troll to respond to that, if you would.

Mr. **Mitchell**. I do not think that in fact we need a war, but I think that there is a guerrilla and a sort of secret war going on right now.

I think it is significant for you to understand the significance of the Pacific Seafood Processors Association taking the position that they are taking, which is that this agreement is not adequate and they want more. Remember that they probably process 85 percent of the salmon.

I think that is significant.

As far as the usefulness of the information, I doubt it very much. And I will tell you the absolute truth from the way that we see it. The foreign fisheries are past masters of manipulating their boat movements, and where those boats go and when they find salmon—when they want to catch salmon, they can catch them.

They find them on their video sounders. They will go find them, they will set their nets out for them. They will radio the boats that have observers and tell them to stay out of areas.

That does not mean that an observed boat will not ever catch a salmon. They will catch a few. But they will never know the magnitude of what is really going on out there. And the foreign fisheries are past masters of this sort of activity. They have done it in the Bering Sea for 30 or 40 years, even when we did have observer coverage, and in other areas of the North Pacific.

I think it is significant when you hear that 95 vessels were sighted by the Coast Guard outside of the squid boundary. That is in terrible weather conditions. Ask them how many blips were on the radar screen when they flew south from Kodiak in their C-130's, vessels that they could not observe.

Thirty to 40 percent of that fleet is fishing north of the current squid boundary line. Now, what are they doing there? They are fishing for salmon.

The information you are going to get from this program is absolutely useless scientifically, but it will be used by the foreigners to justify no further movement. The Japanese are not going to cut their own throats.

Mr. Shima admitted it. He said, we do not want a program that is going to cut our throats; this program is going to cut our throats. And so what they are going to do, and the only reason they are agreeing to it is because they know they can manipulate the movement of those boats. They can control the data.

Senator **Kerry**. Mr. Smith.

Mr. **Smith**. I would like an opportunity to respond to that. This is not Mr. Shima's agreement. He was in a position where he had no choice.

Let me insert in the record a cable I received from Embassy Tokyo.

[The cable follows:]

Department of State Cable from the American Embassy Tokyo, May 10, 1989

Subject: U.S.-Japan Driftnet Fisheries Agreement

The agreement on observers and enforcement activities in the Japanese driftnet fisheries concluded ad ref in Tokyo on May 2, 1989 provides the U.S. with an unprecedented view of and influence over all the Japanese driftnet fisheries. Additionally, it provides intensified observation in the newly expanded northern squid area where the U.S. asserts there is high potential for interception of North American salmon by Japanese squid driftnet fishermen. The agreement was achieved as a result of major concessions by the GOJ and the Japanese fishing industry, departures from fiercely defended positions on freedom of the high seas and flag state independence. These concessions did not come about easily for Japan. The GOJ in writing stated emphatically that failure of the USG to confirm the agreement as adequate for the purposes of the Driftnet Act, at least for this year, will result in withdrawal of the agreement. It will precipitate renewed confrontation and delay progress on driftnet issues for the forseeable future.

In light of the immediate and vocal dissatisfaction expressed by both U.S. and Japanese industry and political figures following the conclusion of the negotiations over observers and enforcement agreements in the driftnet fisheries, the Regional Fisheries Attache made several direct but discreet inquiries into the consequences to the Japanese of reaching agreement or failure to do so. Working level officials of the Fisheries Agency and MOFA, along with Driftnet Fisheries Association officials, described the GOJ shift of position as concessions extracted under threat of certification under the U.S. Driftnet Act of 1987. In spite of Japan's repeated refusal to enter an agreement in response to a U.S. domestic law, the GOJ in the end saw long term benefit in avoiding certification under the Driftnet Act. That is, the GOJ now seeks to establish with the U.S. a stable and cooperative relationship in which to manage changes, which they recognize as inevitable, in their high seas fisheries.

These officials state that initially the Japanese salmon industry sought permission to convert the mothership fishery to a land-based fishery. The Government had argued that this benefit for the salmon fisheries would be worth the concessions necessary to satisfy American concerns over conversion and meet the requirements of the U.S. Driftnet Act. Because negotiations continued beyond the point where conversion could be accomplished in time for this year's fishery, the industry and Government decided to continue with a mothership formula for this year and abandoned their conversion request. The GOJ no longer had any prospective benefit with which to induce the driftnet industry to accept foreign intrusion which they thought would threaten the existence of the fishery. Ironically, avoiding certification under Pelly was the only leverage the GOJ had with its industry (read also key Diet members) to wring out the concessions that were necessary to meet U.S. demands.

These officials complain that the U.S. side may not have gotten all it wanted but the Japanese side gained nothing of tangible benefit; it made concession after concession and without receiving any benefits to justify it. The negotiators have since been criticized severely by Dietmen and required to explain their posture. They explained that their objective was reestablishment of a constructive and non-confrontational framework for the long term fisheries relationship. They wanted to assure that Japan would not be certified under Pelly because of the Driftnet Act. This accomplished, they would work toward improvements in the high seas squid fishery (not necessarily a driftnet fishery forever).

Despite dissatisfaction by both sides, these Japanese officials see this agreement as the best that can be achieved this year. If the agreement is rejected by the U.S. side they do not believe that the Government or the industry would be willing to proceed with this kind of approach again. Further, if Japan were to be certified (even without sanctions) now that they have made this effort, it would be seen as bad faith on the part of the USG. The observers, enforcement and scientific research programs would be cancelled vis-a-vis the U.S. Japan would, however, proceed with Canada, to prove it was a responsible fishing nation. These officials believe confrontation with and retaliation against the U.S. would be unavoidable. Comment. It was its belief in the certainty of confrontation and retaliation that caused the GOJ to continue to negotiate even after there was no hope of conversion for this year. End comment.

I think this analysis is sound.

Senator **Kerry**. Let me ask you. That analysis, frankly, is not at all inconsistent with the analysis of Mr. Mitchell.

I mean, they moved to their current position, and indeed they may well be criticized by Diet members and so forth. But, the Japanese negotiators will be criticized by their politicians for moving at all, or even giving a semblance of having moved.

But if they have moved to where they are only to continue with a subterfuge process, and if their movement is not enough to enable us to really make something happen, then they have moved for political purposes with us and may suffer some consequences with their own people but have not in effect cut their throats.

Mr. **Smith**. Well, if you make the judgment——

Senator **Kerry**. I mean, for instance, if there are not enough observers, what is to prevent a part of the fleet from going off and fishing for salmon where there are no observers? What have you accomplished?

Mr. **Smith**. Henry Mitchell made quite clear that his distrust of the Japanese runs very deep and comes from very long experience. If you distrust them completely, you should not make agreements with anybody you completely distrust.

I am confident that they are trying to extend the hand of cooperation here.

Senator **Kerry**. Agreements are not meant to be based on trust. I mean, we do not negotiate arms control agreements based on trust; we set up a verification structure which guarantees that it is not trust on which it is based. Why should this be any different?

Mr. **Smith**. Let me get back to your question, Mr. Chairman. The observer program, it is really two observer programs in the squid fleet. One is a pilot program which is designed to test the variability and allow us to design a broader program which will get the statistically reliable data we need for the following year. That is ten Japanese and five American observers.

There is also an intensified program in July and August for the northern boundary move that the Japanese have made under their domestic regulations, in which we will get roughly 19 percent coverage with nine North American observers and 22 Japanese.

Now, this is statistically significant. I will not go into the science of it myself. I am not a scientist. But I am assured by the scientists with NMFS, this is a program they basically have designed and that they feel will give them the information they need to make the decisions that are necessary.

Senator **Kerry**. Well, I am going to cede to Senator Stevens, who I know has a lot of questions.

Before I do, let me just ask you a question, Ms. Troll. The film that was made, can you give me a little background on that? When was the film taken?

Ms. **Troll**. The film, the body of the film was done by Earthtrust, and that was taken last summer.

Mr. **LeBudde**. September 1988.

Ms. **Troll**. I am sorry, September 1988.

Murkowski's film was also edited into that and that was done just this last fall.

Senator **Kerry**. When was the videotape made?

Ms. **Troll**. This videotape that you just saw here was made last week in the Governor's office.

Senator **Kerry**. And the vessels in the videotape are what nationality?

Ms. **Troll**. It was too difficult to tell whether they were Japanese, Taiwanese, or Korean. We do have data from the Coast Guard that shows that, of the 95 vessels that they sighted outside of the legal squid zone, that about 50 percent of those were Taiwanese.

Senator **Kerry**. And do you know, or did those who were there doing this know, what fish the vessels were targeting?

Ms. **Troll**. Yes, it is our belief they are targeting salmon, sir.

Senator **Kerry**. Well, let me just say that these are part of the so-called squid fleet, are they not?

Ms. **Troll**. Yes, they are. But you will notice in the film and even in the unedited version of the film——

Senator **Kerry**. There are no squid.

Ms. **Troll** [continuing]. There is very little squid. The only squid that was seen in the original film was that which were in the freezer holds. The squid is the bycatch.

Senator **Kerry**. Senator Stevens.

Senator **Stevens**. Thank you very much, and I appreciate again your staying with us in this hearing.

Mr. Smith, I was disturbed in the follow-up letter which was sent by Counselor Shima which concluded by saying this: "In case Japan should be certified under the Driftnet Impact Monitoring, Assessment, and Control Act of 1987, all the said programs and measures would be cancelled insofar as they relate to the United States."

Was that your understanding before you left?

Mr. **Smith**. Yes, that position was made clear before I left. I mean, that is the fundamental tradeoff. The reason that Japan is prepared to cooperate to this extent with us is because they seek to avoid certification.

Senator **Stevens**. I do not have much time. Let me ask you this. Then did you represent to the Japanese that you would recommend to the President of the United States that we not follow the provisions of the Driftnet Impact Monitoring, Assessment, and Control Act, and that these measures would be sufficient to comply with that Act as far as the Japanese were concerned?

Mr. **Smith**. I made clear that it was an ad referendum agreement, that I would bring it back, and as the negotiator bringing it back that would be my argument. I might not prevail. That decision is made, of course, by the Secretary of Commerce.

Senator **Stevens**. But that is your position?

Mr. **Smith**. My position is that this is a good agreement and I would hope it is adequate to avoid the certification.

Senator **Stevens**. Well, as the principal sponsor of that Act, I do not think you have read the Act.

Mr. **Smith**. I have read the Act.

Senator **Stevens**. Well, certainly our objective was to find a way to deal with driftnets per se. What deals with driftnets per se?

Did you get an agreement that they would put biodegradable material in these monofilament nets? Did you get an agreement they would limit the length of them? Did you get an agreement that they would put marking on the nets that would identify them for the future? Is that in this agreement?

Mr. SMITH. Markings on the net is in the agreement.

Senator STEVENS. Identifying the vessel from which, not only the country but the vessel that used the net?

Mr. SMITH. Let me make sure I have the answer correct.

VOICE. Yes.

Mr. SMITH. Yes, we did get that agreement in this agreement.

Senator STEVENS. That is the first time I have heard that.

That is one out of about ten conditions in the Act. I really do not understand this concept that this is compliance, that says that three-fourth of the observers on board these foreign "squid fleet vessels" will be Japanese. Would you have taken the position, if we put Japanese observers on Japanese vessels within the 200-mile limit, that would have been in compliance with the Magnuson Act?

Mr. SMITH. I cannot address that. My reliance here is on the fact that all of the vessels that have—or 14 of the vessels that have Japanese observers will also have North American observers, Americans or Canadians.

Senator STEVENS. That just means there is fewer vessels covered. That does not add up to me at all. If you have got 32 Japanese, you are going to have an American or Canadian watcher for a group of them, is that right?

Mr. SMITH. The scientists who have designed this agreement say that, given that kind of observer coverage and comparing the results they get from vessels that have Americans and Canadians on them with the results they get from other vessels, they will be able to determine whether they are getting good data or not.

Senator STEVENS. Let me ask you on another tack then. You have a meeting with the Soviets in June. Can you use that meeting to try and get the Soviets to join with us in the goal of eliminating driftnets from the North Pacific?

Mr. SMITH. Ambassador Wolfe will be heading that delegation. With your permission, I would like him to respond to that.

Mr. WOLFE. Senator Kerry, Senator Stevens: We will be meeting, as Mr. Smith said, with the Soviets in June. We have discussed the possibility of some type of multilateral regime to end all high seas salmon fishing. I think we are working towards that goal and I think we can use that meeting as a steppingstone to address the larger problem.

We have been talking about—and I will not take up time on this issue—the bilateral problems with Taiwan, the bilateral problems with Korea and with Japan. But I think ultimately we have got to look at a multilateral approach, and the U.S. and the Soviet Union, we are in the process now of exchanging paper to look at a long-term comprehensive agreement that would include all of these countries.

Does that answer your question?

Senator STEVENS. Well, it does, and I hope that you will be able to move forward.

I think that the problem that I have with this preliminary negotiation with the Japanese, and I can only view it in that light, is that it entirely misses the coalition that led to the enactment of the driftnet law. That was not a fishermen's bill. That was a coalition of environmentalists, scientists, fishing interests, and people concerned with the oceans in general.

It seems to me that you brought back an agreement which will monitor the actions of a few of these vessels. And if all of the people who are observers are trained scientists and none of them are really controlled by their country of origin, namely the Japanese, you might get a smattering of information that would give you some data on the impact of those driftnets on that portion of the salmon in the North Pacific.

But what about the seals and what about the whales and what about the birds, and what about all those nets that are drifting around out there and ending up on our beaches full of dead sea life?

There is nothing here that indicates any agreement by the Japanese to start a process of bringing in those nets. It gives the Taiwanese such an example that all you have to do is stand up and say, well, we will let you get some data to see if your first conclusions are right. I mean, there is no reason for the Taiwanese and Koreans to even cooperate with us on the Driftnet Act negotiations if the Japanese get by with this.

Mr. SMITH. My judgment would be it improves our prospects for negotiation with the Koreans and the Taiwanese. They have thus far, I think, been finding their company with Japan as cover for their lack of agreement. When I went to Korea——

Senator STEVENS. Well, there is no sanction here. What is the sanction on the Japanese for continuing to expand the driftnet fleet?

That fleet was not even there when we passed the Magnuson Act. That is a new fleet. As a matter of fact, it is the vessels that used to be involved in the 200-mile limit that have moved out into the high seas under a new title, and they are now doing something that totally aggravates the whole environmental situation in the North Pacific.

It is worse than if we had not passed the Magnuson bill at all. I really think that you really do not focus on what has happened. You are dealing with a bunch of pirates that were within our 200-mile limit, that led to us enacting a national law to exclude these people from the 200-mile limit. And now you want to give them a greater license out there on our fish than they had within the 200-mile limit.

Mr. SMITH. This agreement does not give them greater license for anything. It involves 1400 observed hauls of the net, which will give us a lot of information that will be of value to us.

What is significant is that it is a precedent on a non-salmon high seas fleet where for the first time Japan has agreed to an observer and enforcement program.

Senator STEVENS. Well, my time is up and Senator Kerry has been very patient. By the way, I want to thank Earthtrust for that film. I think it is again a good example of the way we can work together to achieve objectives, and certainly SEACOPS and Mr. Collier, the Pacific Seafood Processors, and your people, too, Mr. Mitchell, deserve a lot of credit for what they are bringing to Congress in proof.

But my God, you just look at that and you see what is happening in those driftnets. Did you see any squid? Do you know what a squid looks like?

Mr. SMITH. Yes, I know what a squid looks like.

Senator STEVENS. Did you see any of them there?

Mr. SMITH. I did not see any there, no.

Senator STEVENS. I will tell you, I have yet to see any pictures of squid fleet operations bringing in squid. And there is a lot of squid out there. We know where it is and they do catch it.

But these people are now moving two degrees further north, where there are no squid. And did you object to that?

Mr. SMITH. Yes, we did, and that objection is maintained as part of this agreement. They said that it is a high seas fleet, it operates under domestic Japanese law; they have done research which indicates to them there are squid there and there are no salmon.

We have said we have problems with that, we see risks; and if you do move, at least you must agree to have heavy observer coverage and reconsider that line if you start taking salmon. And they do agree to that under this agreement.

Senator STEVENS. Well, let me ask you one last question, those of you from the State Department. If we were able to convince Congress to expand the sanctions under the Driftnet Act before the trigger date of June 29th in that Act, do you think that might get the Japanese' attention?

Mr. SMITH. I do not think they are mainly concerned about sanctions. We have a billion and a half dollar surplus in our fisheries trade with Japan.

Senator STEVENS. I am talking about expanding the sanctions——

Mr. SMITH. Beyond fisheries?

Senator STEVENS [continuing]. So it covers more than fisheries. The Senate-passed Act, you know, would have given the President authority to impose sanctions over a whole spectrum of trade with Japan. Now, that was changed in the House, I think because of State Department objections. I believe that is right.

Mr. SMITH. I know that we did object.

Senator STEVENS. Yes.

So now what I am asking you is, would you agree now that maybe we ought to go back and expand it so that we could get their attention? I can assure you that, in my judgment, you are going back.

If this Administration stands for anything in the environmental field, it ought to understand the driftnet legislation. And if the driftnet legislation is to be abandoned and not fulfilled, I think it would be the worst symbol that could happen as far as the environmental policies of George Bush's Administration.

Mr. SMITH. Well, there is obviously a difference of opinion. My view is that this agreement would set us on a cooperative path which would achieve the purposes of the Driftnet Act. That is why I brought it back. I mean, it may not prevail, but that is why I brought it back.

Senator STEVENS. Well, when it is rejected will you be the one to go back to the table again?

Mr. SMITH. No, no. We will give someone else that honor.

Senator STEVENS. Thank you very much.

Thank you, Mr. Chairman.

Mr. COLLIER. I would like to correct for the record a statement that was made with regard to the association that I represent. The decision that we made was a resolution stating that the agreement was insufficient; that it did not deal with the entire problem of driftnets on the high seas.

Our members produce seafood products that result in gross sales in the magnitude of $1.5 billion—billion, not million—a year, of which about 60 percent is going to Japan.

It was not my decision, a personal decision, to implement this resolution.

Senator KERRY. I think that is very significant, incidentally, and I want to follow it up with a question, because I think it underscores the question of adequacy here.

We have got a lot of people with a very real economic interest here who have taken a very hard position. Now, if the Secretary of Commerce certifies that this is inadequate and we do not reach an agreement that is adequate, are you folks prepared to take the consequences of an embargo?

Mr. COLLIER. That was a business decision that the members made in adopting the resolution. They do feel, though, that there is a window of opportunity right now, between now and June 29th, of possibly going back and renegotiating.

Senator KERRY. Agreed, agreed. But assuming you cannot come back, are they willing to take the risk?

Mr. COLLIER. That is the risk in our position.

Senator KERRY. That is a pretty heady statement, when those kinds of dollars and that kind of economic interest is at stake and people feel that.

I will admit that I am not as versed in the negotiations as Senator Stevens is. But I sure see a kind of permissiveness in what has come out of it, in effect, because of the inadequacy of the scope and because of the lack of protection that we specifically called for in the driftnet legislation. The governments of the driftnet fleets are going to have the sense that it is okay, you know, we have got another year of bamboozling permissiveness, and we will manipulate the statistics here and we will play with this there.

It is a process that I think finally people here are waking up to. You know, it has taken us a long time to learn. I think a lot of people may be laughing at how slow Americans have been to learn.

But in every single discipline I can think of, people are finally understanding that we get suckered into this process as a result of our notions of what fair play is, what a negotiating process is, and what is fair and is not.

I have got to tell you that 400 miles across the line, the kind of persistent salmon fishing that is going on by people who are not supposed to be there, has one name on the high seas. It has already been used here today and it ought to be used again.

It is called piracy. And it is not accidental. It is absolutely purposeful, with all the intent in the world. And I just do not think that we ought to allow an agreement to sit there that somehow suggests that it can continue. And my fear that this agreement does.

Mr. **Smith.** If I could react just quickly, because I have been hearing from a lot of interests, including those in Alaska, that favor this agreement, too. The Alaska cold storage employers group has written me a letter or has written a letter to Secretary Mosbacher. There are two or three others that have.

I have called all of the advisors of the INPFC advisory group which advises me in these negotiations, and they are about 80 percent in favor of the agreement. There are several who are undecided and several who are against it, so that it is not all on one side in terms of the interests affected by this agreement.

That is the only point I would like to make.

Senator **Kerry.** I do understand that. I realize there are those who are supportive of it. But that is the perception.

Senator, before we close off do you want to ask any questions?

Senator **Stevens.** I do not understand that last statement, Mr. Smith. I think I have talked to all the INPFC advisors within the last two months, the last three weeks as a matter of fact, and I have not found one who supports this agreement.

Mr. **Smith.** Let me provide you with a list. I have had conversations within the last days with virtually all of them, and I would be happy to provide your office with a list and the comments they made to me.

Senator **Stevens.** I would like to have that, because I think maybe some of them ought not to be reappointed. They do not reflect our point of view.

[The information referred to follows:]

I have reached nineteen of my INPFC advisors by telephone to discuss with them the ad referendum agreement with Japan on driftnet fishing on which material had previously been provided to them by mail and FAX. Of that number, six indicated that they were still considering the matter and were not ready to indicate whether or not they favored going forward with the agreement. Of the remaining 13, two, Henry Mitchell and Pete Isleib, were opposed to the understandings reached and believed they were not adequate to justify withholding certification under the Driftnet Act.

I understood the 11 others contacted to be of a view that, on balance, we were better off to proceed with the understandings negotiated and seek vigorously to build on the 1989 programs in 1990 and beyond, rather than certifying and foregoing the opportunity to place observers on squid driftnet vessels this year. Each, of course, had their individual perspective and emphasis which I will not try to characterize, since they all remain available and able to speak for themselves. The members of the INPFC Advisory Committee which I have thus categorized as favorable to the understanding reached with Japan are following:

Clem Tillion; Chairman, U.S. Section; INPFC; Halibut Cove, AK, Rick Lauber; Commissioner, U.S. Section; INPFC; Juneau, AK, Al Burch; Manager, Alaska Draggers' Association; Kodiak, AK, John Gilbert; Wards Cove Packing Company; Seattle, WA, William Gilbert; Seattle, WA, Joe Easley; Oregon Otter Trawl Commission; Astoria, OR, Joan Bergy; Consumer Representative; Mercer Island, WA, Mark Coles; Alaska Fisherman's Union; Seattle, WA, Richard Jacobsen; Sand Point, AK, Gordon Jensen; Petersburg, AK, and Charles Meacham; Meacham and Associates; Anchorage, AK.

Thus, 11 of the 13 advisors (79%) who had made up their minds were advising that we proceed with the agreement as negotiated.

Mr. **Mitchell.** Mr. Chairman.

Senator **Stevens.** Well, if they are people that were put up there by us and they are supposed to be reflecting the point of view of the people in this area—this is the International North Pacific Fisheries Convention, and they are advisors to the State Department from that area. I do not think they are reflecting their constituents. And you know, I would not get elected under those circumstances, and they sure should not be reappointed.

Senator KERRY. Yes, Mr. Mitchell.

Mr. MITCHELL. Mr. Chairman, I would like to say, I have been a member of INPFC for many years and there are many individuals on INPFC who really do not follow the implication of this. And additionally, there was a lack of—there was misinformation on this that has been floating around on these agreements and on the level of coverage.

Many of them really do not understand. Many of the INPFC advisors have never really followed this issue. At least half of the INPFC advisors, if you asked them specific questions about directed salmon fishing, even though they go to meetings and that sort of effort, have not really put that much interest into it.

The reason that INPFC is like that is that once you get appointed to INPFC, you are there for life. And that has to be looked at, too, because there has to be new blood on INPFC. And if it means that there have to be terms of five years and that is it, all well and good. I will quite obviously get off myself.

Senator KERRY. The other last comment I would make is that my sense is that, if the Administration were to raise the ante on this a little bit, they are going to get a little bit more of a response, particularly in view of the Super 301 and the other things that are in the air right now.

I do not buy the notion about the statistics. There is not a fisherman out there who does not understand what these nets do, there just is not. I mean, there really is not.

We know that thousands of birds, thousands of marine mammals are being killed. You cannot make one film, and plenty have been made, without showing what is happening. This is not just piracy of economic goods. It is a piracy of the environment and of the ecological system on which the whole planet fundamentally depends.

I just have great difficulty dealing with our incremental approach in these matters constantly, when faced with the reality of what I think are the choices. You cannot continue to put out 30,000 miles of monofilament net every single night. Some of it is lost, and we know the problem of ghost nets. How can you do that?

I do not know. Have we lost common sense?

Mr. SMITH. No, I do not think so. I think the first step is to get some hard information with observers from the several countries concerned, and I think that probably will lead to an end to this practice.

Senator KERRY. Well, I guess we have a different definition of "hard information."

On that note, the record will remain open. There will be some submission, I think, of additional testimony. There were also a couple questions, Mr. Douglas, that I wanted to ask you about the delay in the certification process, and I would like to have your responses, if we can, soon.

Thank you very much. We stand adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

OVERSIGHT OF MARINE FISHERIES MANAGEMENT

THURSDAY, MAY 18, 1989

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
NATIONAL OCEAN POLICY STUDY,
Washington, DC.

The committee met at 9:04 a.m. in room SR-353, Russell Senate Office Building, Hon. John B. Breaux presiding.

Senator BREAUX. The committee will please come to order. This morning we will continue our hearings on the Fisheries Conservation and Management Act.

We would like to welcome our first panel this morning, which will discuss the Gulf and South Atlantic fisheries. If the witnesses will please take their seats: Mr. Paul Mulready, Vice President for Sales of Johnson Fishing; Mr. Robert Jones, Executive Director of the Southeast Fisheries Association; Mr. Alex Jernigan, Orlando, Florida; Mr. Edward McCulla, Market Development Director—Mr. McCulla, what is the name of your company?

Mr. MCCULLA. Motivatit Seafoods, Incorporated.

Senator BREAUX. Motivatit Seafoods, Incorporated. We are delighted to have you here to receive your testimony.

Mr. Mulready, we have you listed first.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Let me make a quick opening statement. I have to go to the Finance Committee and then I will be back after the markup.

Mr. Chairman, thank you very much.

We are clearly in a new phase of our fishery policy that is no longer making allocation decisions between Americans and foreigners. We are now trying to decide if allocations need to be among Americans. I look forward to reviewing the many issues raised by the Americanization of our fisheries.

If there is anything that the Magnuson Act was successful at, it was reserving the fishery for Americans. But it is now possible that in this new phase the Magnuson Act needs to be refined and the committee should look again at the regional councils' composition and the guidelines that have been set for these councils to see if changes are necessary.

Americanization of the fishing fleet has not necessarily benefited all U.S. fishermen, and some of those who have not benefited were the very ones who helped build initially the U.S. presence in these fisheries. In particular, I have heard from some of my constituents who have made great investments of time and money in their businesses and who contributed to the Americanization.

I am talking primarily about the joint venture operators who forced foreign catchers out of the waters as their forces grew. We have failed to ensure these fishermen an opportunity to phase out of joint venture operations and into something else.

I am not quite sure how to address the concerns of this group, but they are genuine concerns that we should address. I know I am not alone in this concern and I am hopeful that the committee will address the problems raised by my constituents and others and will work to resolve them.

Mr. Chairman, because of time constraints, everyone who wanted to testify on the issues facing the North Pacific fisheries could not be so accommodated. For this reason, I have joined Senators Stevens and Gorton in sending a letter to Chairman Hollings asking that field hearings be scheduled this summer to supplement the testimony we will hear today, and I am very hopeful that our request will be granted.

Thank you very much, Mr. Chairman. I will be back as soon as Finance is done.

Senator **Breaux**. Thank you, Senator.

Any comments from Senator Stevens?

OPENING STATEMENT BY SENATOR STEVENS

Senator **Stevens**. Mr. Chairman, I would join Senator Packwood in stating that we have some substantial problems now. We joined together twelve years ago when we created the Magnuson Act, and now that we have complete Americanization within the 200-mile limit we do have a severe problem.

One of the problems we have in Alaska is that the coastal communities that depend upon fish for their small canneries and really for their way of life in these small communities find that they are now being left out of the allocation of fish that is totally available for Americans.

We had a situation this last year where seven factory trawlers took half the quota for pollack in the North Pacific in two weeks and the pollack fishery had to be shut down for six months.

Now, that isolated a whole series of small communities, basically native communities, along the northwest coast of Alaska, and we find that to be a very difficult problem now, to not only allocate between the competing interests at sea, but also to consider how or whether it is possible to make allocations to specific geographical areas so that those small communities can continue to survive in their traditional ways.

I think this may be a very difficult year to come to an agreement on extension of the Magnuson Act, unless we address the question of allocation in some way.

I am pleased to be with you. I have the opposite problem, and that is that when Senator Packwood comes back I have to go to the Appropriations Committee. So I will be with you for a while.

Senator **Breaux**. Well, that is the problem in the Senate and also in the other body. But we are delighted to have your comments and they are well taken.

At this time, we are pleased to hear from the panel. Mr. Mulready, we have you listed to go first.

STATEMENT OF PAUL A. MULREADY, EXECUTIVE VICE PRESIDENT FOR SALES, JOHNSON FISHING, INC., ON BEHALF OF THE AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION

Mr. **Mulready**. Thank you, Mr. Chairman. I want to thank you for providing the opportunity for me to be at this hearing.

My name is Paul A. Mulready and I am the Executive Vice President of Johnson Fishing, Incorporated, which is a division of Johnson Worldwide Associates. I am a former President of the American Fishing Tackle Manufacturers Association and I have served as the Vice President and Director of the Sport Fishing Institute.

Mr. Chairman, I have been asked briefly to present to the committee a profile of the sport fishing industry, in particular the involvement of our industry in the marine environment. In addition, I will share with you our major concerns as they relate to the marine environment and to the Magnuson Fisheries Conservation and Management Act.

I think recreational fishing must be viewed from two perspectives: first of all, level of participation; and the economic impacts associated with that participation. Simply stated, sport fishing is popular and it is big business. It is a fun, family-oriented activity and it represents roughly one percent of our gross national product.

Let me just quickly share some important statistics with you. According to the 1988 Gallup Poll, sport fishing was the second most popular recreational activity among American adults, second only to swimming. Approximately 29 percent of American adults participated in recreational fishing in 1988. That equates to nearly 50 million citizens.

Among men, fishing ranked as the favorite recreational activity, involving the active participation of 41 percent of all adult men at some time during the year.

According to American Sports Data's 1987 survey, fishing and specifically deep sea fishing was the number one preferred activity for Americans over 55 years of age.

When you focus on marine waters, and based on information from the lastest national survey of fishing participation, which was 1985, nearly 14 million people 12 years of age and older spent approximately 172.6 million angler days on the nation's marine waters. That is nearly three times as many marine angling days as were taken by that same age group in 1955. That was 58.6 million.

The projected increases in marine angling demand indicate that by the year 2025 coastal states will be called upon to support over 211 million days of marine fishing, or 40 percent more than in 1985.

Because recreational fishing is such a popular activity, the fact that it is also an important industry is often overlooked. In 1985 nearly $28 billion in expenditures was attributed to sport fishing. The industry provides 860,000 jobs in the U.S. work force and $12.5 billion in wages and salaries.

Retail sales in 1985 associated with saltwater fishing were $4.9 billion. The region with the greatest amount of total retail sales was the Gulf of Mexico, with $1.7 billion or 35 percent.

The estimated total multiplier impacts of saltwater sport fishing was $13.6 billion in output, of which $3.5 billion was paid in wages and salaries to 285,724 jobholders.

The sport fishing industry comprises many component parts—raw material suppliers, product manufacturers, buyers, distributors, wholesalers and retailers. For example, there are approximately 5,000 dealers in the U.S. that specialize in fishing tackle products. In 1987 they sold approximately $800 million worth of merchandise.

Nearly 3,000 boat dealers sell fishing gear and some additional 14,000 sporting goods dealers sell approximately $1.1 billion worth of fishing products.

For many small coastal communities, recreational fishing is an important part of their local economy. A recent survey of saltwater anglers indicated that 73 percent of those surveyed traveled away from home to fish at least once a year. The opportunity to fish is an important enhancement to tourism, which is of course a major industry for our coastal states.

In summary, recreational fishing is a lot more than the serene images we often call to mind. Mr. Chairman, the goods provided by the diverse assortment of companies that constitute the sport fishing industry rely upon a wide variety of factors to market products for the fishing public.

The one single factor that every one of these firms and their employees must have to stay in business and to stay employed is a healthy and attractive fishery resource. The marine fisheries resource base has been subject to tremendous exploitation by commercial and recreational fisheries. The result has been that, with the possible exception of bluefish, populations of every fish species off the Atlantic and Gulf Coasts subjected to dual sport and commercial exploitation have been degraded to historic low levels of abundance.

A 1986 report by the National Marine Fisheries Service concluded that stocks should be maintained at some level above which the minimum spawning stock from recruitment overfishing is protected. In other words, the study sought a conservation standard so that stocks would not be exploited to the margin of overfishing.

The recreational fishing industry is fundamentally concerned with the deficiencies of the management system under the Magnuson Act, which in so many cases has failed to provide for wise resource conservation and effective management and instead, as reflected in the 1986 State of the Fisheries document from the National Marine Fisheries Service, has allowed continuing exploitation toward growth and recruitment failure.

The study reflected a number of deficiencies of the Magnuson Act management process which continue to allow overfishing of some stocks. For example, the varying interpretations of optimum yield permit "allocation considerations to override conservation responsibilities."

To support economic needs, overcapitalized fisheries in some instances have pressured the councils to raise the optimum yield harvest above sustainable yields. This practice allows more participants to extract some level of financial return from the fisheries, but leads to overfishing and decreases the total return from the fisheries.

The recreational fishing industry shares the concern that the concept of optimum yield as applied by the councils has allowed harvests above the level of maximum sustainable yield, and notes that the study concluded that the optimum yield modifier "has become the rule." This pressure toward overfishing will worsen as domestic fisheries become overutilized.

To effectively terminate the continued overexploitation of the public's fisheries assets, the study proposed to separate conservation decisions from the allocation process. This functional split seems on balance to be the wisest management for marine fisheries.

The nation's common property marine fish stocks will be better served having an independent scientific body required to establish a target quota based on the best scientific information available. It is important to note that a cap on harvest at the biological harvest limit would cause a dramatic increase in the intensity of political infighting at the council level.

The councils would have to make tougher decisions on who gets how many fish and could not simply increase harvest to avoid tough choices. However, we have not had many of the economic and social analyses tools in hand to make such decisions.

The long-term best interests of the recreational fishing industry, which depends entirely on healthy and abundant common property fish stocks, mandates that the long-term health of the resource is the key objective. Resource conservation must be kept independent of user-oriented allocation decisions.

We support the National Marine Fisheries Service's proposed strengthening guidelines to the Act's national standards. The new guidelines are designed to enhance stock conservation objectives; and failing to accommodate an enhanced conservation principle by strengthening the national standard guidelines, we find ourselves in essential support of legislative modification of the Section 301 national standards.

Such modifications should specify the structural maintenance of these public assets, rather than emphasis on short-term exploitive use.

As one means of reducing the overexploitation pressures on limited marine fisheries, we do support with others a recommendation that the councils be encouraged to consider the use of limited entry as a management tool. Limited entry is being considered with increasing frequency by some councils.

This is a management option which should not be statutorily inhibited in marine fisheries. Rather, it should be encouraged.

I would like to conclude by just mentioning a few other issues of concern to our industry. The marine habitat, for example. Changes in the quantity and quality of habitat will result in the decrease of fish stocks.

Wetland habitat supports the preponderance of fish stocks of importance to the recreational fisheries community. The average national loss of wetland habitat has been placed at 300,000 to 500,000 acres per year, and the loss and degradation of habitat translates into fewer fish for fishermen to catch.

We support examination of ways to further strengthen habitat conservation considerations in the fisheries management plan process. Better data on habitat conditions will materially assist decisionmakers with projecting future health of many key species.

The statutory exclusion of management authority over highly migratory species should be eliminated. Such an action would permit U.S. policies to conform to the policy of other fishing nations and allow the U.S. management of highly migratory species within the U.S. exclusive economic zone.

Substantially more information must be collected to accurately reflect the commercial and recreational harvest of stocks managed under the council fisheries management plans. The fishery management councils are seriously handicapped in obtaining factual and meaningful data on the recreational catch.

In order for recreational fishing interests to receive their fair share of marine fisheries stock allocations, it is imperative that the National Marine Fisheries Service be directed, and also that they be sufficiently funded, to redesign and implement a recreational statistical data system that provides the fishery management councils with timely and factual recreational use and harvest data.

Long-term research on fish stocks and habitat relationships must also be enhanced to improve the value of the best available information.

In summary, the recreational fishing industry is a growing, diverse business community that depends to an increasing degree upon the nation's common property marine fisheries. The Magnuson Act system must serve to promote wise conservation, development, and use of the natural resources under its direct stewardship and to obtain for the public reasonable socioeconomic returns on these public natural resource assets.

This sustained delivery of public returns mandates development of a broad national policy that emphasizes public resource conservation and long-term maintenance of these public assets, rather than short-term exploitive use. Enhanced protection of highly migratory species under the Act, improved data collection, including harvest reporting and continued strengthening of habitat-related considerations in fisheries management plan development are all recommended actions that will improve the fishery management process undertaken by the Magnuson Fisheries Conservation and Management Act.

Thank you, Mr. Chairman.

Senator **Breaux**. Thank you, Mr. Mulready.

Let me ask the witnesses, to the extent possible, to summarize your statements so we can get to the questions. We have the written testimony here, and we have read it.

Mr. Robert Jones, Bob.

STATEMENT OF ROBERT P. JONES, EXECUTIVE DIRECTOR, SOUTHEASTERN FISHERIES ASSOCIATION

Mr. JONES. Thank you, Mr. Chairman. Good morning. Good morning, members of the committee.

I will be brief and will quickly summarize the testimony in the five minutes that you have given me.

I think when the MFCMA was passed and became the law of the land we embraced it. As our association was on the opposite side because we represented a great number of distant water fishermen at the time, we felt we knew and understood the law very well. And after it was passed, we felt that we were taken care of under the frameworks of the national standard that Congress worked so deliberately and diligently to put into the bill.

We are not sure any longer.

I was honored to have been selected to serve on the Gulf of Mexico fisheries management council in 1976 and was one of the original appointees. The other one, the other Gulf member, was a Captain B.J. Putnam, who was a charter boat fisherman from Panama City, an outspoken person whose main desire at the time was to remove the Japanese fishermen from fishing in the Gulf of Mexico.

I came off the council in 1981, was replaced by Mr. Jernigan. Since that time, our state, Florida, has not had any commercial fishing representation since 1981.

The South Atlantic council has not had any commercial fishing representation since about 1983, when Jerry Sanson was removed from there.

What makes the situation a little unique as far as Florida is concerned is that we have four public members who serve, and all four public members are either on the board or officers of the Florida Conservation Association, which is an organization in Florida. And I think I would be correct in testifying that this particular organization could not be classified as a spokesman for or friendly to the commercial fishing industry per se. I truly wish it could be otherwise.

Something else that is of recent vintage is, we are not sure where NOAA is in their role. We looked at NOAA and we looked at the Federal part of this Act as the entity that would be the keeper of the flame, that whatever controversy and arguments and politics were encompassed within the council system, after it left the region whatever was sent up here would be viewed as it pertains to the Act, to the standards, and to what we thought was the thrust of the Act.

What appears at present to us is that NOAA has made a decision to more or less accept what the councils do, particularly when it comes to allocation, and then just assume that the national standards have been met and rubber stamp what is sent up.

We thought that NOAA's overview was a prime reason for the enactment of the Act. We thought that is where fairness and equity would prevail. And as I say in my prepared testimony, if this overview cannot be sustained then the councils should be abolished in our opinion.

I need to say that the MFCMA is a strong piece of legislation, very strong, and that we in the commercial sector would probably already have been out of fishing different types of gear on different types of fish in the Gulf and South Atlantic if it was not for the Act.

And I would have to say that, even with what we consider to be imbalances in the membership on the council, as well as imbalances on the advisory committees, that even with all of that we still have a small, but I think powerful, voice. I think that, even with all the power politics that does occur and bloc voting, as we would identify it, even with all of that we still have a viable industry.

We feel that if we had some representation on the Gulf and South Atlantic councils, as was the intent of Congress, that the Act would be stronger and it would work better. We would not win everything we wanted. We would lose a lot of things. But at least we would be in the process and be able to articulate our position.

We think that the Act was enacted to expand the commercial domestic fishing industry, exclude the foreign fishing, and called for better management of the stocks. Right now it seems like we are just getting to a point where we are doing all of the work as competition between the user groups: Who gets the fish?

Fortunately, the economic potential originally foreseen by the legislation can still be realized, as it has in the Pacific Northwest.

Instead of building a commercial fishing industry in the nation, we watch as other industries are taking over the coastal zone. We have areas in Florida, particularly in the Key West area, where in years past there may be 200 or 300 shrimp boats and other commercial vessels tied up at the docks, and today there are no docks for them to tie up. Key West Harbor is just totally gone.

It has all been taken over by condominiums and other activities, because everybody seems to want to live on the water and in the coastal zone. And that is having a significant impact on our ability to have processing plants and unloading facilities in those areas.

I think something must be done if we are to maintain a competitive commercial sector along the vast coastlines of the nation. I think we in the Gulf and South Atlantic are losing our competitive edge. And while I shudder to think of a totally Federal resolution to the process, it is clear that, unless an equitable process is put into place, that you the Congress will spend more time and money for diminishing returns.

I would point out that this year was the first year that the per capita consumption has gone down. I do not know the real or correct reason. Possibly, it is the first time it has happened in a long time; it may be a result of a lot of bad publicity, a lot of articles showing syringes and other things in the ocean.

It also just may be a time in history where the consumption of fish is going to go down.

I will close by saying, as is the case in our opinion so often in government, it is not the Act that is the cause, it is the players. It is our humble view that if we had balanced representation on the Gulf council and the South Atlantic council, the MFCMA would be working as it was intended.

Therefore, my only recommendation today would be for Congress to mandate that no state is placed in the situation Florida finds itself in. Florida has no commercial fishing representation on either one of the councils and it is one of the largest commercial producing states in the region.

I would be glad to answer any questions at the appropriate time, Mr. Chairman.

[The statement follows:]

SOUTHEASTERN FISHERIES ASSOCIATION, INC.
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ROBERT P. JONES, EXECUTIVE DIRECTOR

STATEMENT OF THE
SOUTHEASTERN FISHERIES ASSOCIATION
BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
ON THE
REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Good Morning Mr. Chairman and members of the Committee. My name is Robert P. Jones and I have had the pleasure of serving as executive director of SFA since 1964. I had the opportunity to be around when the 200 mile bill was conceived, hotly debated in both houses of Congress and ultimately passed and implemented.

Chairman Hollings in his letter of May 9, 1989, asked me to address important fishery trends and identify any issues of concern. He also said the Committee would welcome my recommendations for improving the effectiveness of federal fishery programs and for balancing commercial and recreational fishing interests.

To begin with a little background, Southeastern Fisheries Association is one of the largest regional fisheries trade associations and is the only commercial fishing association in the Southeast that has membership in all fisheries and from all sectors of the fisheries ie; fishermen, dealers, processors, boat builders etc. in our geographical area.

For the record, SFA did not support the passage of the 200 mile bill. At the time it was being debated in Congress, many of our members were distant water fishermen who for years had been fishing offshore Mexico and offshore other Central and South American countries. We felt that once the United States adopted a 200 mile limit, other nations would follow us and our historical international fishing spots would be taken over by the countries inshore and our boats would be forced to return to the Gulf & South Atlantic area where it was already crowded. (Attached to ~~this~~ testimony are copies of pages 974 & 975 of the Legislative History of FCMA of 1976.)

Nevertheless, the bill passed and we have seen all the things we were worried about happen as it pertains to our distant water fleet having to return home. So much for ancient history.

When the MFCMA became the law of the land, we embraced it. And having been on the opposing side throughout its journey through Congress, we felt we knew what was in the bill and felt comfortable that under the framework of the National Standards worked out so deliberately by Congress, we as an industry could survive. I'm not sure any longer.

We viewed P.L. 94-265 as primarily a piece of legislation affecting the commercial fishing industry and throughout the fight ran across very few sport oriented fishermen. We assumed the sport fishermen would have equal access to all the marine resources and the fishery management plans would be fair and equitable to all users. I'm not sure any longer.

We also viewed the federal regulators as the keepers of the flame. I'm not sure any longer.

I was honored to have been selected to serve on the Gulf of Mexico Fishery Management Council as one of the original appointees. The other person from Florida was a Captain B.J. Putnam, who was a charterboat captain and an outspoken person pushing for the elimination of Japanese fishing in the Gulf of Mexico. I did not know Captain Putnam until the first Council Meeting. I served for six years having been replaced by Alex Jernigan in 1981. Captain Putnam was replaced by Mary Kumpe in 1982. Since I left the Council, there has not been one commercial representative appointed to the Gulf Council from Florida. On the South Atlantic side, there hasn't been a commercial fishing representative from Florida since Jerry Sansom in 1981, I believe. And while this in and of itself makes the case that the system isn't working from a commercial fishing perspective, what makes the Florida situation worse is that the four members who do represent Florida (2 on the Gulf Council and 2 on the South Atlantic Council), are listed as Board members or officers of the Florida Conservation Association. (copy of FCA letterhead dated May 1, 1989, attached to this testimony) I believe I would be correct in testifying that this group would not be classified as friendly to the commercial fishing industry in the Gulf and South Atlantic area. I truly wish that it could be otherwise.

The appointment process has become so politicized that in many instances the White House has to sign off before a person is selected. This makes it very difficult for normal fishermen or their representatives to match campaign contributions or use other clout that comes from fat wallets and power politics. We think the appointment process is so far gone that only some radical action by Congress can create a balanced Council system.

There are some qualitative issues that substantially affect the balance of representation. Recreational interests for the most part on the Gulf and South Atlantic Councils are represented by well educated, articulate and highly successful, financially fixed people who have the time and means to pursue their Council work without the burden of earning a living. By contrast commercial fishermen, small processors and other small business people are limited in how much time and money they can devote to Council affairs.

Recreational interests from Florida, for instance, are represented directly by their key leaders, while commercial trade association executives such as myself are consistently excluded from nomination and appointment from Florida. In the words of the outdoor writers in Florida, it's a conflict of interest for a trade association executive to serve, but it's perfectly alright for a developer, engineer or someone else with a special interest in the wetlands or marine life to serve.

In addition, it would appear that some commercial representatives presently serving on Councils are appointable and serve only on the basis of their willingness to support key recreational positions such as those positions surrounding the redfish issue. I think it would be revealing to look at the voting blocks and patterns that have been developed on the Gulf or South Atlantic Council to see if there ever was a split vote on any controversial fishery issue brought before the Council. These distortions work together to ensure the success of the recreational users' agenda while retaining the appearance of commercial representation. I recall for instance when John Mehos of Texas went to see one of the key leaders in Texas who wanted gamefish status for redfish. Mr. Mehos told him there might be a middle position. When appointment time next came around, John Mehos was not on the list.

Also, NOAA in recent times, has evidently taken the position that whatever the Councils wish to do as far as allocations among users is concerned, then that is perfectly alright with them. NOAA seems to have decided to let the Councils determine if the National Standards have been met. We always thought this was the primary function of NOAA in the Plan development process. We thought this NOAA overview would be where fairness and equity would prevail. If this overview cannot be sustained, then the Councils should be abolished.

We would have to testify that the root cause of this imbalance in the appointment process is the fact that no Secretary of Commerce since Elliot Richardson, has been able to appoint a balanced Council in the Gulf & South Atlantic areas. This is our statement and this is our belief. And unless Congress mandates and forces the appointment of a balanced slate, which includes commercial representation from each State or each Council, then we believe our entire industry and culture will become a thing of the past and that 25 years from now people will be going to museums and telling their kids that there used to be a commercial fishing industry and these hardy and independent men and women were forced off the sea just as the Indians were forced of the lands. Mr. Chairman, we do not wish to become either a thing of the past or a tourist attraction, nor a guide for some wealthy sports fishermen.

I noticed in something I read from the National Fisheries Institute that in 1981, the implementation of the MFCMA cost the taxpayers $41.85 for every ton of food produced from the U.S. zone and in 1988, it costs $66.66 per ton. This 22% increase in cost for less production seems strange indeed. It also points out that something is wrong with the way the Act is being implemented.

When Congress passed the MFCMA, they placed particular reference on the production of food and also to provide recreational opportunities. My reading of the Act indicates there is a difference between commercial and recreational and that commercial was first and foremost and the production of food for the public was primary. What has developed is a perception of "us versus them," and that it's not fair for a commercial fisherman to harvest 30,000 pounds of fish and the sport fishermen is only harvesting ten, twenty or thirty fish per trip. Also, a perception has been created in the minds of the public that when commercials take fish, they are ravaging and exploiting the resource, but when a sport fisherman takes a fish, he is having a pleasing aesthetic experience and is contributing greatly to the economy of the United States and the world. I have always felt that commercial fishing creates wealth by producing a commodity that is subsequently used in commerce while a sport fishermen expends wealth that has already been generated from some other source. Am I wrong?

I would testify that the non-boating seafood consumer has been the group hit hardest by the imbalances on the management councils. Very little, if any, consideration is given to the seafood consumers. The "fish fights" have degenerated to a situation of commercial harvest versus recreational harvest and the development of the thesis that fairness can only come when all boats are given the same bag limits. This was one of the cries used in the Florida redfish struggle. The sport fishing leaders said a fair allocation is one fish for everybody, the commercial fisherman as well as the sport fisherman. The question is, who is going to produce the one fish for the non-boating consumer.

My testimony today has concentrated on the appointment process which determines the balance needed for fair and equitable management. I don't mean for it to sound negative, I really mean for it to be just a statement of the situation as we see it.

I would be remiss if I didn't say that the MFCMA is a very strong piece of legislation, and we, the commercial sector, would probably have already been forced from the Gulf of Mexico if it wasn't for the Act. And even with all the imbalances on the Councils and the Advisory Committees we still have a small but powerful voice. Even with all the power politics and block voting that occurs, we still have a viable industry. And if the time comes when the commercial fishing industry can have a fair voice as voting members of the Council, then the Act will have served its purpose.

The MFCMA was enacted to expand our commercial fishing domestic capabilities, exclude foreign fishing and called for better management of the stocks. It appears that the legislation is now more directed at competition between user groups. Fortunately, the economic potential, originally foreseen by the legislation can still be realized, as seen in the Pacific Northwest, but I wonder if other regions have benefitted?

Instead of building a commercial fishing industry in this nation, we watch as other industries destroy our resources via pollution, coastal abatements and competition for space in the coastal zone. In addition, some of these same violators would close off commercial harvests to set aside these resources for their recreation. How paradoxical it is that those associated with big business can pollute, then insist upon an ever increasing share of the remaining resource for their pleasure.

The states must also accept responsibility for some of the problems realized. Instead of putting forth their best talents, they've often been unable to maintain any continuity of either thought or representation. The resulting political swings change the voting complexion on a regular basis. In Florida, for example, we've already had six different individuals represent the State. That averages less than 2 years per person. When you take into account the heavy political connotations of the appointment process, it's no wonder why the system can't work. Instead of true expertise, the Councils are sometimes served by well-meaning individuals, but not trained, nor prepared for the complex issues to be faced.

Something must be done if we are to maintain a competitive commercial sector along the vast coastlines of this nation. We are losing our competitive edge. While I shudder to think of a totally federal resolution to the problem, it's clear that unless a more sophisticated process is put into place, you, the Congress, will spend an inordinate amount of time and money, with decreasing returns. Is the recently announced decline in consumption of seafood a first signal of the failure of the system? Has it collapsed? Will the eventual result be a society unable to produce living marine resources for internal use, thus enhancing our position as a debtor nation? Speaking for my members, we want to work to expand the resource base for all user groups, insuring an appropriate resource for all consumers. I don't believe this is an unreasonable expectation, but based on the current directions of those making the decisions, I doubt we are likely to see improvements in the short term.

As is the case so often in government, it's not the act that is the cause of the problem, it's the players. It's our humble view that if we had balanced representation on the Gulf Council and the South Atlantic Council, the MFCMA could be working as it was intended.

Therefore, my only recommendation today would be for the Congress to mandate that no State is placed in the situation Florida finds itself in. Florida has no commercial fishing representation on the Councils. And all the public members in Florida serving two Councils come from the same sport fishing club. What a shame this is for our industry.

Attached to my testimony are some remarks from other trade associations in the region. I invited all the ones I knew to have some input into this hearing and thought you might like to have their views also.

I would be pleased to answer any questions the Committee might have.

Respectfully submitted,

Robert P. Jones

Robert P. Jones
Executive Director

Senator **Breaux**. Thank you, Mr. Jones.

Mr. Jernigan.

STATEMENT OF ALEX JERNIGAN, MEMBER, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL AND COASTAL CONSERVATION ASSOCIATION

Mr. **Jernigan**. Mr. Chairman, thank you very much for the opportunity to speak with the committee.

My name is Alex Jernigan. I am a past principal in the consulting engineering firm of Post, Buckley, Schuh and Jernigan, which is situated throughout the United States. I am presently a member of the Gulf of Mexico fishery management council and am in my third term on that council.

I would like to summarize my remarks by saying that one of the major things that needs to be addressed in the management of fisheries is to revise the management philosophy that currently exists. The philosophy thus far has been patterned after the philosophy in the shrimping industry and the philosophy in the menhaden industry, which is that that fishery is such that it is very difficult to overfish that fishery and therefore the philosophy is to harvest it to its maximum extent.

This kind of philosophy does not work with finfish fisheries and, as can be seen with the fisheries in the Gulf of Mexico, it has not worked. The philosophy needs to be changed to one which provides management measures and regulatory measures before the fishery is in trouble. And in the absence of scientific information, that philosophy needs to be such that the management measures and the regulatory measures are more conservative than they are when you have adequate scientific information.

That kind of philosophy has been constantly rejected by the National Marine Fisheries Service, and the councils are not permitted to make those kinds of regulatory measures.

I would like to explain to you a little bit about who CCA is, or the Coastal Conservation Association is. It is an organization that started with the conservation of fishery resources in mind. It started in Texas with a few people. It now has about 45,000 members.

It is located in nine states—all the five states on the Gulf of Mexico and Georgia, South Carolina, North Carolina, and Virginia. They have spent several million dollars enhancing the redfish fishery in the State of Texas, where they built a hatchery for hatching redfish fingerlings.

They also spend a lot of money in research, in cooperation with the Audubon Society and other conservation organizations, to attempt to establish what the problems are with the estuaries and what can be done to improve the problems in the estuaries where many of the coastal fisheries spend a part of their cycle.

I think, to summarize my comments, I would say that we need to modify and change the management measures that are presently being used, and that needs to be accomplished by whatever changes are necessary in the Magnuson Act. We need to improve on the debate that continually ensues about commercial versus anti-commercial in the arena of fisheries management.

That is not the proper debate. The debate is excessive exploitation versus conservation of resources.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF ALEX M. JERNIGAN
FOR
COASTAL CONSERVATION ASSOCIATION

Good morning. My name is Alex Jernigan and I am a member of the Gulf of Mexico Fishery Management Council and the Coastal Conservation Association (CCA). I am also a part principle in the Florida based engineering firm of Post, Buckley, Schuh and Jernigan for whom I now serve as a consultant. I am a recreational fisherman who is concerned about the nation's natural resources and their protection for this generation and for generations to come.

Today I would like to address the major resource issue in our region. The need to establish a sound conservation ethic in the users and the administrators of our marine resources. In addition, I would like to dispel a number of the myths that have been created by detractors about CCA and recreational fishermen. Lastly, I would like to leave you with recommendations to improve the nation's marine resource management.

There is an immediate need to change the way we manage fisheries. In the next 50 years this country will be faced with extensive problems. Demographers predict that as much as 80% of the population will live within 100 miles of the coast of the United States. This shift in population brings with it an increase in pollution and congestion that effects fisheries habitat and a continued stress on coastal fisheries as more people with greater access participate in marine recreational fishing. At the same time, we have seen a substantial increase in the price and total consumption of fish. These increases have attracted more effort in the commercial industry to supply a broad spectrum of species to the market place. A concomitant increase in the efficiency of the gear through the use of electronics, monofilament and gear configuration has put substantial pressure on the resource.

There is little recent history to suggest we are in a position to adequately address this new challenge. The basic philosophy characterizing much of the management of our resources has allowed for the excessive exploitation of our fisheries. Much of this has come from the shrimp fishery. We have long been told that there is no need to limit the growth and harvest of the shrimp fishery since management limitations will have little or no effect on next year's abundance in the fishery. Although this is probably correct for shrimp, we are now recognizing the significant impact that the shrimp trawl bycatch is having on other resources, notably red snapper. The philosophy in the shrimp fishery seems to have permeated the management strategy of most of the federal and state fishery managers and many of the user groups. This exploit it to the end of the season view, coupled with a concept that the fishery is open and free for the taking, has created a management philosophy that is causing substantial resource impacts.

The problem faced by the fishery manager is relatively straight forward. Fishermen, both recreational and commercial, argue that the resource is available to them as a public resource. Limitations on access can only come about if there is clear evidence that the fishery is being overharvested. The evidence of overharvesting is usually a decline in the catch per unit of effort or the complete collapse of the fishery. The net result is that although the fishery manager thinks the resource should be protected, he faces tremendous political pressure to keep it unregulated.

We have seen this philosophy in a number of fisheries, all with disastrous results. Redfish is the most famous but there are a number of others. Three years ago the Gulf and South Atlantic Councils attempted to put limits on the swordfish fishery off the east coast. The proposed measures were rejected by the Department of Commerce in part because of the lack of scientific certainty of the effect of the measures. The result is the near collapse of the fishery only two years later. The South Atlantic Council has just recommended a 78% reduction in the entire Atlantic harvest of swordfish just to keep it at its present depressed level. The mackerel fishery in the Gulf and South Atlantic has experienced the same type of problem. The first Council plan for king mackerel established an Optimum Yield so high that recreational and commercial fishermen could not catch it. We are now living with the consequences of that fiasco. The same thing happened to Spanish mackerel and it is likely that sharks and tuna will be added to this list.

The most commonly recommended solution to this problem has been to collect more data to produce a better scientific analysis. Clearly better data and improvement of the scientific capabilities of the institutions using the data are needed, however, this will require significant increases in funds and personnel. Increases are unrealistic and therefore are not an acceptable solution. The Congress could redirect the efforts of existing information collection and scientific programs, but this is only a partial answer. Menhaden and shrimp are two fisheries in the southeast that have been studied for a number of years. Redirecting some of the efforts of these fisheries to other areas might make sense, but even then there would not be adequate resources to collect and analyze information for most of the newer fisheries in the southeast.

One reason money alone will not cover all of the fisheries lies in the way fisheries data is collected. The most efficient and least costly way is through data supplied in an active commercial fishery. This works for the large commercial fisheries but in the southeast the problem is that many of the fisheries are small and by the time the government can respond to the commercial exploitation of the species it has been overexploited. The most recent example of this is the shark fishery. There is virtually no data on sharks but there is a growing concern that the newly developed shark fishery coupled with the longline bycatch will significantly damage the resource. Even under the best circumstances data collection and analysis in this fishery will not catch up with the need for management.

The solution is simple; we must change the way we look at the resource. We can not continue to treat a public resource as free and open to anyone who wants to use it for what ever purpose. We must change the basic philosophy which underlies all federal marine fisheries management. We must place the burden of proof on the users of the resource to demonstrate that harvesting will not be harmful, rather than permitting uncontrolled harvesting until we find out otherwise. In the absence of scientific certainty we must impose restrictions on the exploitation of the resource. This does not mean we are regulating or can regulate every possible fishery. However, certainly those fisheries that are important recreational and commercial fisheries should be managed. They should be managed more conservatively in the absence of reliable data. We must conserve the resource through conservative exploitations.

This underlying philosophy was first used in the redfish plan and has since been applied to the billfish plan. In redfish it was applied too late as the effects of the inshore recreational and commercial fishery and the offshore commercial fishery had already severely impacted the fishery. But, despite a clear understanding of the impact of management, regulations were put in place. Within eighteen months of the initial management controls we have seen that without the most severe management measures there would have been a virtual stock collapse in the fishery. Had this approach been followed in the swordfish fishery, the impending 78% reduction in the harvest could have been avoided.

Regulating a resource without sufficient scientific data on the impact of management makes more sense that waiting for the decline and rebuilding the resource. This Committee must tell the Administration in no uncertain terms that the conservation of the resources means more than just preventing a stock collapse. The Administration must adopt management measures that provide for the protection of the resource and control of the users rather than the present approach. We must make the word "conservation" in the Magnuson Act mean something.

Coastal Conservation Association

I would like to tell you a little about CCA. The Coastal Conservation Association began with a small group of sport fishermen in Texas in 1978. Since that time, it has grown to include 45,000 members, with chapters and state organizations in nine states. As an organization it is composed of the Gulf Coast Conservation Association (GCCA has members in Texas, Louisiana, Mississippi and Alabama), the Florida Conservation Association and the Atlantic Coast Conservation Association (ACCA has members in South Carolina, North Carolina, Georgia and Virginia). CCA provides direct financial support to programs that enhance the resource like our support of the redfish hatchery facilities in Texas. We also foster education programs for youths and research programs designed to provide a greater understanding of the resource. We actively participate in marine resource policy at the local, state, regional and national levels.

As the new kid on the block in the southeast and here at the national level, we have often been criticized as a group of selfish fat cats who are just out to get the resource for themselves and as a group that is anti-commercial. Neither of these allegations bears any relationship to the purpose of the organization. Certainly some influential and successful individuals are members of CCA, but to characterize our membership as all fat cats is a gross exaggeration. To characterize a group of individuals who care as deeply as these people do as selfish and only out for themselves is grossly unfair. CCA is composed of sportsmen who want to conserve the resource for the public, recreational and commercial alike. We are trying to promote a greater conservation ethic through the organization and the institutions that manage our resources. Nothing would make us happier than to have a well managed resource that could satisfy every user. That just isn't realistic given the status of the resource and the number of people using it. To describe CCA as anti-commercial is a gross oversimplification of a complex management problem in the southeast.

Three years ago when CCA began its first national issue, a number of the groups that wanted to further exploit the redfish resource began to denigrate the organization as a group who wanted to put commercial fishermen out of business. Those groups, which tended to represent the larger offshore vessels, wanted to continue to fish the large redfish brood stocks offshore and close down the inshore fishery. To help their cause, they described CCA as anti-commercial. What they failed to tell people was that the inshore fishery was composed of both recreational and commercial fishermen. Unfortunately, the inshore commercial vessels weren't well enough organized to be an effective voice nationally, so that the perception created was that the commercial offshore fishermen were doing battle with the inshore recreational fishermen. In fact, both sectors of the fishery, inshore and offshore, included both recreational and commercial fishermen. This is often the case in resource allocation decisions. CCA is not anti-commercial, we are pro-resource, something that most users, commercial and recreational, support. I suspect groups do this because the characterization of the issue is easier to understand if one can make it black and white; commercial verses recreational. In reality, the debate is frequently mixed with parties from all sides arguing. The recent debates in billfish are a good example. The billfish plan prevents the sale and importation of billfish from stocks in the Atlantic Ocean, except for the Caribbean where a limited commercial fishery is allowed. The no sale, no import measure was opposed by a some commercial organizations, while others were completely ambivalent. The same plan places a minimum size limit on the landing of billfish. This measure was supported by some recreational groups, opposed by others. Both measures conserve the resource but to do so both measures to some extent limit its free use. Neither measure is anti-recreational or anti-commercial, both are pro-resource.

The other argument that has been raised and still persists is that the makeup of the Gulf of Mexico Council membership is unbalanced. The most often heard definition of unbalanced is that there are too many recreational fishermen on the Council. I have even heard that there is not one single commercial fisherman on the Council. This is the best case of wordsmithing, avoiding the facts, that can be produced. The fact that someone votes for a conservation measure does not make them anti-commercial and, somehow therefore, a recreational fisherman.

Most votes on the Council split geographically or philosophically and are, for the most part, very close. Of the 19 voting members of the Council, five are state directors, one is the regional director of the National Fisheries Service and the other 11 are appointed by the Secretary of Commerce. Of the 11 appointments, three are recreational fishermen, two are environmentalist or conservationists, one is a shrimper, one is a menhaden processor, one is a shrimp broker, one is a crab processor, one is a fish broker and importer, and one is a public administrator. The Council is well balanced with broad participation.

Councils should be composed of a broad spectrum of knowledgeable individuals with varied backgrounds. Council members do not and should not represent one particular interest. They should utilize information and make judgments about the best use of the resource for the nation, not the people who are paying their salary. If they are on the Council only to represent the interests of one group of users, then we should amend the statute and allow the Secretary to identify all of the potential users of each regional resource, select the best paid representative each group can obtain, appoint them to the Council and let them carve up the resource. We could also amend the name of the statute to be the Magnuson Fishery Allocation and Management Act. This, of course, would be ridiculous.

Amendment Recommendations

On the whole the Magnuson Act works. Most people that have commented on it and have testified in these and other hearings have said so. There are, however, some changes that would be useful to aid the resource. The most notable is the inclusion of tuna under the definition of fish. Management of the large pelagics has been hampered for years by the lack of jurisdiction over tuna. Soon the proliferation of the longline tuna fishery will significantly reduce the tuna populations in the Gulf, if it hasn't done so already. The United States must manage this resource immediately to prevent yet another stock collapse.

The Administration should be given every possible tool to allow the Council's to develop acceptable limited entry schemes. To the extent that the Act has barriers to the successful completion of a limited entry system, they should be removed. Finally, the Congress needs to support the Councils and the Administration in their efforts to impose a conservation ethic in the fishery management system. There is more at stake than just the livelihood of the users, both recreational and commercial. There is a need to conserve the resource for tomorrow by using it wisely today. Conservation needs to be the paramount concern of the Congress, the Administration and the users. We all must be cognizant of the resource's limitations and resist the pressure to allow it to be exploited for short-term gain.

Thank you for allowing me to testify here today, and to present CCA's views on some of the problems facing fishery managers in the southeast.

Senator BREAUX. Thank you, Mr. Jernigan.

Next we will hear from Mr. McCulla.

STATEMENT OF EDWARD F. McCULLA II, MARKET DEVELOPMENT DIRECTOR, MOTIVATIT SEAFOODS, INC., AND MEMBER, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Mr. McCULLA. Good morning, Mr. Chairman, members of the committee.

My name is Edward F. McCulla II. I am a member of the Gulf of Mexico fisheries council representing the State of Louisiana. I appreciate the opportunity to discuss with you my thoughts on the Magnuson Act today.

The single most important need for me as a fisheries manager is good, sound, scientific information. Sound management is totally dependent on such information, and includes economic information as well as biological.

One of the problems is research findings have not kept pace with management needs. For example, in 1982 nine species of fish and shellfish in the Gulf of Mexico were under management on three Gulf council plans. Today the Gulf is involved in nine management plans covering 75 species of fish, and two other plans, shark and butterfish, are being developed.

Federal funds for data collection simply have not increased, in spite of the rising research costs and skyrocketing number of new species under management.

Numbers alone do not tell the whole story. A major consideration is that data that is needed for management, such as king and Spanish mackerel, are very costly to collect and process.

Managers simply do not have much confidence in catches that we are seeing today on both commercial and recreational sides. The quota on Spanish mackerel, for example, was exceeded by over 100 percent in the last two years by the recreational fishery. So we do not have a lot of confidence in the information that we are receiving to make these management decisions.

Given the recent importance of the role of economics in fishery management, NMFS must enhance its data collection activities so that economists in NMFS can provide better economic insight into possible fishery management council decisions.

Last, but not least, there is a need for more Federal enforcement resources. The National Marine Fisheries Service, the agency responsible for enforcing the regulations that we are trying to impose, has only five agents to cover the entire Gulf of Mexico. While the Coast Guard and other state agencies do help them, without the enforcement our management decisions are useless.

Again, let me emphasize my concern for proper and timely economic and biological information. With this information, all user groups will benefit from management of fisheries stocks. Without it, we will continue to have tremendous resource and user conflicts, as currently exists in the Southeastern United States.

Thank you for allowing me to testify today and I would be happy to answer any questions.

[The statement follows:]

STATEMENT OF EDWARD F. MCCULLA II, MEMBER GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Good morning, Mr. Chairman and members of this Committee, my name is Edward F. McCulla, II, I am a member of the Gulf of Mexico Fishery Management Council representing the state of Louisiana, and the commercial fishing sector. I am also Market Director for Motivatit Seafoods, Inc. in Houma, La. a major oyster, blue crab and crawfish harvesting and processing firm. I appreciate the opportunity to discuss with you my thoughts regarding the Magnuson Fishery Conservation and Management Act.

The single most important need for me as a fisheries manager is good scientific information. Sound management is totally dependent on such information which includes economic information as well as biological information. Scientific information must be generated to answer basic questions such as:

1. How big are the stocks?
2. Where do they spawn and grow up?
3. How old are the fish and how many of each age can be safely taken?
4. How important are the resources to each fishing sector?
5. How is the environment affecting the stocks?

Answering these questions is not inherently difficult, but gathering the information costs money—the more information needed, the more money required. The main problem is, research findings have not kept pace with management needs. For example, in 1982 only nine species of fish and shellfish in the Gulf of Mexico were under management under three Gulf Council plans. Today the Gulf Council is involved in nine management plans covering 75 species and two other plans (shark, butterfish) are being developed. Federal funds for data collection simply has not increased in spite of rising research costs and the skyrocketing number of new species under management.

Numbers alone don't tell the whole story. A major consideration is that data needed to manage some species, such as King and Spanish Mackerel, are very costly to collect and process. Because of complex management allocations, mackerel alone have five separate quotas in the Gulf. Quota monitoring not only eats up the port sampler's time, forcing them to slight other important species being landed, but requires an elaborate, quick-response data management system. Recreational catch statistics, which are also used for quota monitoring, require a substantial increase in resources to improve their precision and timeliness. Managers simply do not have much confidence in the estimated recreational catch because of limited data. For example, recreational quota's on Spanish Mackerel were exceeded by over 100% in the two most recent years, which indicates that the impact on the recreational fishery is less than if strict adherence to quotas were required, as is the case in the commercial fishery, which impact is total closure.

Information which is necessary for economic analysis includes recurring data such as total landings, prices, and effort. In addition, specialized economic analysis requires data such as costs and returns which is gathered on a one-time or infrequent basis. Unfortunately, the NMFS apparently lacks the resources to gather and manage the data which are necessary to conduct a number of useful studies such as the short-term losses vs. long-term gains from foregoing some catches now for larger catches in the future, the proper allocation of fish stocks, the economic implications of various styles of management such as gear restrictions, and the overall changes in fishing values which are possible through proper management. The two types of data mentioned, continuing data collection and one-time data collection, involved somewhat different problems. The continuing data collection activities need some reorganization of current resources plus some additional resources. The one-time collection activities are currently not supported with any directed funds and all information of this type is gathered by using MNFS port agents which creates an additional burden on these resources which are responsible for the ongoing data collection activities. Given the recent importance which has been given to the role of economics in fishery management, NMFS must enhance its data collection activities so that the economists in NMFS can provide better economic insight into possible fishery management council decisions.

Last, but not least, is the need for more federal enforçement resources. The National Marine Fisheries Service, the agency responsible for enforcing the federal fisheries regulations, has only five agents to cover the entire Gulf of Mexico. While NMFS agents get considerable help from the U.S. Coast Guard, and from some state agents who are cross-deputized, the enforcement arena is lacking. Without enforcement resources, the best management regulations in the world are useless.

Again let me emphasize my concern for proper and timely economic and biological information. With this information all user groups will benefit from the management of fishery stocks, without it, we will continue to have tremendous resource user conflicts as currently exist in the Southeastern United States.

Thank you for allowing me the opportunity to discuss my views with you, I would be happy to answer any questions you might have.

Senator Breaux. I thank all the members of the panel for being with us. I know it has not been easy, and I thank all of you for your testimony.

Mr. Jones, a great deal of your testimony is spent talking about the balance problem on the councils. It is a concern that I share. How many members do we have on the Gulf council?

Mr. Jones. 17.

Senator Breaux. In your opinion—I know Mr. Jernigan might disagree with this and I will give him a chance to respond on the thing. But if you were dividing the council into those who come from recreational backgrounds and those who come from a commercial background, could you give us an indication of how the Gulf council breaks down?

Mr. Jones. Could I divide it just one step further?

Senator Breaux. Sure.

Mr. Jones. I would divide it—It is hard sometimes to put a handle on a particular member unless he tells you what his philosophy is. But I would divide it into those people who were in the recreational sector or sport fishing sector, those people who were in the shrimp or menhaden sector, and then all other fisheries, all other fin fisheries. I would break it down like that.

Under that category, I would have to say there is zero representation by a person of knowledge on the commercial aspects of any finfish that is governed by that council. There is no one from spiny lobster or stone crab or mackerel or kingfish or redfish or anything from a commercial sector.

There are people who are with the shrimp sector and there are people—there was one with menhaden, which is not managed by the council.

Senator Breaux. How many from the shrimpers? Shrimp is the second-highest value fishery in the nation as far as the catch. How many shrimp industry representatives do we have?

Mr. Jones. We have Mr. Collins from Texas and Mr. Chauvin from Louisiana. I think Mr. Graham is off, and I think Mr. DeKaiser is more into other fisheries.

Is there anybody else from the shrimp?

Mr. McCulla. No, that is it.

Mr. Jones. Two.

Senator Breaux. Two.

And you pointed out in your testimony on your last page, Florida has no commercial fishing representation on the council and all the nongovernmental members from Florida who serve on the two councils come from the same sport fishing club.

Mr. Jones. Yes, sir.

Senator Breaux. Mr. Jernigan, let me give you a chance to give your comments on this point.

Mr. Jernigan. Yes, sir. The makeup of the Gulf council is, as pointed out, 17 members. Five of those are undecidedly and unquestionably—five of eleven who are appointed—there are five state directors who are state representatives.

Five of the eleven appointed people are unquestionably commercial fishermen or involved in the commercial fishing industry in one aspect or another. There is one person from Florida who is a conservationist, has never fished in her life, is not a recreational fisherman.

This is the reason I said in my summary of my statement the issue is not commercial versus recreation; the issue is overexploitation versus conservation of fisheries. But there are two members who are conservationists. There is three members who are pure recreational.

Senator **Breaux**. Actually, I would hope they would all be conservationists.

Mr. **Jernigan**. Well, if you could observe the vote of the Gulf council from time to time, you would observe that that is not the case. They were instructed at their last council meeting when they were considering snapper-grouper, that the red snapper fishery was in a worse state than the red drum fishery was when we regulated the red drum fishery, and that it would require a bag limit of about two fish per person per day and a commercial quota of—and I do not remember the number, but a severe commercial quota.

The council finally voted for a bag limit of seven fish per person per day and a commercial quota which was about three times that which was recommended by the scientific group.

So it has not been traditionally a conservationist movement on the Gulf council.

Senator **Breaux**. Let me ask you, how many members on the council are CCA members?

Mr. **Jernigan**. There are at least four and probably five.

Senator **Breaux**. Do you know if any of them are members of NFI?

Mr. **Jernigan**. No, sir, but some of them are members of OFF, some of the people active in the council. And I am not sure, there may not be a member now on the council that is a member of OFF.

OFF had at times an insurance program which prompted recreational fishermen to join OFF, which is Organized Fishermen of Florida, a commercial fishing organization.

Senator **Breaux**. Are there any members now on the council?

Mr. **Jernigan**. I do not know whether there are or not, I do not.

Senator **Breaux**. Mr. McCulla?

Mr. **McCulla**. Not to my knowledge, sir, there is no one.

I think there are seven, to answer your question, seven people on either GCCA or the Florida Conservation Association.

Senator **Breaux**. Does anybody have any problems with an amendment to the Act that, in addition to the current law which requires that appointees must have knowledge and experience in the fishing area to be qualified to serve on the councils, a requirement that the council be balanced in their representation of the interests that they reflect as members of the council?

Mr. **Jones**. No.

Senator **Breaux**. Do you have any problems with that?

Mr. **Jernigan**. Would you please say that again, sir, so I can thoroughly understand?

Senator **BREAUX**. The question is, in looking at potential amendments to the council as far as the requirements—a couple of years ago we amended it to require that members of the council be knowledgeable and experienced in fisheries matters. That was an effort to try and prevent people who knew nothing about fisheries, but knew the governor, from being appointed to the council.

It seems to me now that the balance of the council between the competing interest groups is a real concern. And to restore credibility to the council, an amendment, which I do not have the exact language of, which would require those appointees to the council to reflect the balance among the various competing interest groups.

Mr. Mulready, do you have any comment?

Mr. **MULREADY**. I think we would tend to favor that, Senator. We would like to see the language, I guess, before it is finalized.

Senator **BREAUX**. Certainly. It is not worked out.

Mr. **JERNIGAN**. I do not have a position on that, sir.

Senator **BREAUX**. No position.

Mr. Jones?

Mr. **JONES**. Totally support it.

Senator **BREAUX**. Mr. McCulla?

Mr. **MCCULLA**. We support it also.

Senator **BREAUX**. Senator Stevens?

Senator **STEVENS**. Thank you, Mr. Chairman.

I will be brief, because I just want to get some information about how you do things where you all are from. Does your council have the right to assess costs for services to the organizations and individuals that you deal with?

The Magnuson Act allows councils to assess fees for services. Do you pursue that?

Mr. **JERNIGAN**. No, sir. If I understand what you are saying, we do not pursue fees from anyone other than administrative costs for any licenses and permits we might require.

Senator **STEVENS**. It says "contemplated," but do you have any of those?

Mr. **JERNIGAN**. Yes.

Senator **STEVENS**. Do you issue permits?

Mr. **JERNIGAN**. We have permits, yes, sir.

Senator **STEVENS**. Do you have some limited entry then in your area?

Mr. **JERNIGAN**. No, sir. Well, we have limited entry to the extent that the council has said on a couple of fishery management plans that beyond a certain date a person cannot obtain a permit for that. And then we have limited entry to the extent that we have passed plans which says that if a person cannot show that a minimum of 50 percent of his income, his earned income, comes from commercial fishing, he cannot get a permit to fish in that fishery. We have that kind of limited entry.

But we do not have the kind that is traditionally referred to as limited entry.

Senator **STEVENS**. You do charge a fee for that type of a permit?

Mr. **JERNIGAN**. Yes, sir, administrative costs only, in some cases.

Senator **STEVENS**. Do you have a need for observers on vessels within the 200-mile limit in your area?

Mr. **JERNIGAN**. Yes, sir.

Senator **STEVENS**. Do you have any?

Mr. **JERNIGAN**. I do not know, sir. We have requested observers from time to time, but in most cases the National Marine Fisheries Service has not provided those observers.

Senator **STEVENS**. Do you require a notice of intent to fish commercially in any of the zones under your jurisdiction, your council area?

Mr. **JERNIGAN**. If you are a domestic fisherman?

Senator **STEVENS**. Yes.

Mr. **JERNIGAN**. No, sir.

Senator **STEVENS**. I am seeking a way to finance an observer program and also a program to allow regional councils to acquire the basic data and maintain a baseline data system for the species in their jurisdiction. And it seems to me that that ought to be a burden borne by the people who fish in the area.

Do you charge a fee for sports fishing outside the three mile limit?

Mr. **JERNIGAN**. No, sir. The only fee is that some states impose a license fee for marine recreational angling, which applies to either—applies to any member of that state, whether he is in the Federal waters or the state waters. But there are no fees charged by the council.

Senator **STEVENS**. The Ducks Unlimited group came forward with a duck stamp years ago. It has been a very successful program and really has supported a whole series of what I think are very worthwhile efforts to try and maintain and enhance the production of ducks and migratory birds.

Mr. Mulready, you know about that and how successful it is. I think we all do.

Mr. **MULREADY**. Yes.

Senator **STEVENS**. Have you ever explored that concept in terms of your area for a fishing stamp to be acquired by all fishermen, commercial or sports fishermen, in the saltwater areas beyond the three mile limit?

Mr. **JERNIGAN**. No, sir.

Senator **STEVENS**. Do any of you have any opinion how that would go down as far as the fishermen in your area are concerned?

Mr. **JONES**. From the commercial sector, Senator Stevens, until they can feel that they are part of the process and part of the system and have representation on the councils, I do not think they would want to embrace that concept at this time.

Mr. **JERNIGAN**. Senator Stevens, from the perspective of most of the states that I am familiar with in the Gulf, they either have or are attempting to acquire a state fishing license, and I would think that they would oppose that, though I am not part of that scheme to acquire a fishing license.

I am pretty sure that that would be opposed by the states because it would interrupt the flow of money to the states, or conflict with.

Senator **STEVENS**. What would be the feeling about a Congressional authorization to the council to devise a system of fees and charges so that they could acquire the data that each council felt was necessary and take the measures for protection of fish in their area that they think are necessary?

I mean, you all would decide what you want, and North Atlantic what they want and North Pacific what they want and the Pacific what they want. Would that be acceptable if it was not mandated by Congress, but there was an authorization to your council to work out what was acceptable in your area for getting the financing that was necessary to carry on the functions?

I do not really see any additional Federal money coming our way to do the things that we all believe are necessary, although what we believe is necessary in the North Pacific you probably would not think is necessary at all, and what you think is necessary we do not even understand.

Mr. **JERNIGAN**. As a member of the Gulf council, I would say that the Gulf council might be receptive to that position.

Senator **STEVENS**. Well, I hope we think of that along the line. Thank you very much.

Senator **BREAUX**. Senator Gorton?

Senator **GORTON**. No questions.

Senator **BREAUX**. Let me ask, we have not had a regional director on the Southeast in over two years now. I take it that has obviously had an effect on the management operations of the Southeast.

Can anybody tell me how things are going without a regional director, and is there any kind of a consensus—I doubt it, but I need to ask the question—on trying to get behind a recommendation on someone down there?

Mr. McCulla?

Mr. **McCULLA**. I think Doc Angelovic has done an excellent job in the position that he has been assigned. But it is hanging over everyone's head, everyone that's involved in this process.

I think National Marine Fisheries Service has got to be more involved through the regional director with our process of making plans for fishery. You know, we will be sitting going through a process and he will come, somebody will talk to us from National Marine Fisheries Service after the meeting and say: I do not think that is going to fly. And we have just hashed out five hours, six hours of debate on a plan.

You know, why can they not come out during the process and say, this is not going to fly, or this is and this is the problem with this? We get a plan going. We send it up to their office. They send it back, and then we have got to go through the process all over again.

I think the need to be more involved in the process and the direction of building these plans for fisheries, and if they see a mistake in it, if they don't think something's right, they ought to come out and tell us and let us hash it out right then and there, instead of waiting another month, two months down the line to bring it back up.

But yes, we do need a regional director and he needs to be very involved in our process of making decisions.

Senator **BREAUX**. Let me ask if anybody has any comment on the issue of a possible change in the U.S. position with regard to the management of highly migratory species of tuna. Should they be included in the FCMA or should we continue to try and manage those resources through international agreements?

Mr. Jones?

Mr. JONES. Yes. Senator Breaux, at this particular time we would hope that they could stay under the management of ICCAT. Again, everything—we hate to be just one-sided on everything that we say and do, but a lot of our opinions and our philosophy is based on the fact that we just do not have much say in the process where I am from.

If we had representation and there was a good case made that it would be in the best interests of the U.S. to bring tuna under the Act, then I think it should be discussed and possibly go that way.

But under the present circumstances, our view would be that, if we brought it under the Act, the next thing we would do would be to make it a game fish.

Senator BREAUX. Mr. McCulla?

Mr. McCULLA. I agree, I do not think we need to bring tuna under the Gulf management council's plan, for the simple fact of the things we were just talking about. We have recreational-commercial conflicts. The data we receive now on the species that we are trying to manage is not good enough to make decisions with, I feel, comfortable in making management decisions.

I certainly do not think we need another burden with bringing tuna in, as highly migratory as that is. There is just no way National Marine Fisheries Service can monitor it and tell us what we need to do on that.

Senator BREAUX. Mr. Jernigan, do you have another opinion on this?

Mr. JERNIGAN. Yes, sir, I do.

Senator BREAUX. I am not surprised.

Mr. JERNIGAN. I am not so much concerned with tuna as I am the fact that we have been unable to manage swordfish, billfish, and will be unable to manage sharks so long as the Act provides the exemption for the tunas that it now provides, because they all mingle in the same area, are all caught by the same longline gear.

Frequently—we were prevented by the National Marine Fisheries Service from implementing a management measure for swordfish, as badly as it needed it, because that it might interfere with the longlining for bluefin tuna. Had bluefin tuna been under the Act, we could have taken that into consideration and could have managed.

What we were attempting to do on swordfish was to prevent longlining at night when the swordfish season is closed in various areas, because that is when you predominantly catch swordfish. And the tuna industry claimed that that would interfere with their right to fish for tuna, and the National Marine Fisheries Service bowed down and was unable to be assertive enough to adopt the management measures.

We now find out that swordfish is in such bad shape that the scientists tell us that we would have to have over a 70 percent reduction in the harvest of swordfish just to keep it from declining any further than where it already is.

Senator BREAUX. You have a billfish management plan, do you not?

Mr. JERNIGAN. Yes, sir, we do have a management plan. But it would be much more effective if we had control of the management of tuna.

Senator **Breaux**. Gentlemen, I thank you very much.

Mr. Mulready, just one final question. Under the Wallop-Breaux program, how much money has your industry contributed to recreation?

Mr. **Mulready**. It has been a marvelously beneficial thing to our industry, Senator. In just fiscal 1989, we will have record funding of nearly $180 million to help finance sportfish restoration, boating programs, and such.

I think the industry is genuinely delighted, and as that fund continues to grow I think we have to continue to monitor it. We think some oversight activity is probably needed to make sure that the funds are well used and we continue to provide an enhanced fishery.

Senator **Breaux**. Are there any suggestions for expanding the activities funded? I see my colleague from the Gulf is here getting brought up to date, and I will see if he has any questions of this panel.

But are there any expansion possibilities under the Wallop-Breaux program. The money is increasing each year because of more recreational fishing, more equipment being bought, more commercial fuel being sold.

So everybody is contributing to it. It has been an immensely successful program, allowing fishermen to put dollars where their interests are. It has generated millions of dollars and will continue to increase.

Are there areas that could benefit from those funds? We are going to end up with every area having a fishing dock and a boat launch ramp facility eventually, and we could start looking at other things that need to be done. Are there any suggestions about other areas that the Wallop-Breaux funds might be used for down the line?

Mr. **Mulready**. Senator, I do not know offhand. I am sure that the Sport Fishing Institute and our trade association are looking at those things. They are probably not ready to make recommendations.

This has been a sudden upsweep in funds available. I think we are basically delighted that we now are giving many more resources to the program.

Senator **Breaux**. I want to recognize now my colleague from Mississippi for any questions or comments Senator Lott might have.

Senator **Lott**. Thank you, Mr. Chairman, and I will be brief.

Sorry I did not get to hear all your testimony, but we appreciate the opportunity to have you here today. I would like to visit with you about a very important part of our region of the country. Fisheries means an awful lot, obviously, to the Gulf area—Mississippi, Louisiana, all of our states.

Let me just ask you this, and just a general question for the panel: Do you feel that we are fully utilizing all of our resources or are there some possibilities of other resources that we could develop? I have particularly in mind the butterfish, which we just found a few years ago as being a significant resource in the Gulf, and now we have learned that there is a good possibility to market that in Japan.

What is the potential there? And are there some other resources that we should explore that we could develop in the future?

I would be glad to hear from any of you. Mr. Jones?

Mr. JONES. Thank you, Senator. I think butterfish offers a substantial potential. It also offers the opportunity for the councils to come up at the same time with the management regime at the same time you are developing a fishery, rather than after the fact.

It concerns me sometimes when you talk about after-the-fact management, because most all of the fisheries that we are involved in have been being developed for hundreds of years, so you had to come in after it was over.

I think that there is a tremendous number of species out there, Senator. I think there is one particularly called the offictus rex, which is about an eight-foot eel. It is in about 300 to 600 feet of water, and it has beautiful white meat. It is the ugliest animal in the Gulf of Mexico, but it has a delicate flavor.

It has a bad bone factor in that you just cannot filet it.

Senator LOTT. Kind of like the butterfish. I mean, people in our area will not eat it, but other people like it.

Mr. JONES. I would not eat it if I knew what it was. But it tastes like lobster.

I think there is a series of fish that the lab in Pascagoula has done studies on, opportunities that are available to us. But a lot of that development has to occur from fish companies and processors who have an ongoing business and they are not losing money, so that they can develop it.

But I think that the potential is great in the Gulf.

Senator LOTT. Well, I have felt for years that there is a lot more potential in the Gulf than we have fully utilized. And I am encouraged that now we are doing a better job working with the National Marine Fisheries Service, getting the private fishermen involved, learning how they can go about getting the resources to convert their equipment and getting at these other resources.

Let me ask you, though. Do you feel that we can have a balance, as we find these new resources and we go out and catch them? Can we not at the same time have protections for the other resources, protect the sports fisheries, and also other endangered species?

I just am not one of those who feels like we have got to be a sports fisherman, commercial fisherman, or a conservationist, and you cannot be all three. I think you can.

Mr. Mulready?

Mr. MULREADY. I think, Senator, we agree that management is the answer, and a fair distribution of people.

Senator LOTT. Do you feel like the National Marine Fisheries is doing a good job trying to convert what they have learned, what they do, to the use of the private sector?

Anyone want to touch on that?

Mr. JONES. I think they are doing a good job in many of the areas. I think, like a lot of government agencies, they are subject to level funding. They have been constrained by budgets, as all of us have, everybody in the country.

I think that they try, as far as they can, to get the statistics and information to the people. But as always, they could do a better job.

I think that your exploratory fishing, I think they are on target with their crews reports and their activities on a basis that follows whatever they are doing. The potential is there for some improvement, but I think they are doing almost as good as they can.

Senator Lott. Well, I would be interested in getting any specific suggestions you have on improvements. I feel like the National Marine Fisheries Service over the past 15 years has improved.

I remember when I first came to Congress 16 years ago a lot of what they did involved just the research and cataloguing maritime laws, and it was nice good things, but it was not being utilized or converted to the ability of the fishermen to use it.

But if there are more things that we could do in that area, I would like to hear what it might be. Yes, sir?

Mr. Jernigan. Senator Lott, there are a lot of good, qualified, dedicated people at National Marine Fisheries Service. However, the National Marine Fisheries Service suffers greatly from a lack of leadership. We, as an example, in the Southeast region have not had a permanent regional director since some time in 1986, and we are suffering greatly from that.

We get virtually no leadership at all in the Southeast region out of the people who are responsible for leadership. I think the capability exists in the National Marine Fisheries Service to provide the information and to provide what the councils need and to provide development for fisheries.

But I do not think the leadership exists at all.

Senator Lott. Let me ask you this. I realize my time is about to run out here.

With regard to this leadership, do you not think it would be very helpful if in those leadership positions we had people that were, number one, familiar with the Gulf, number two, educated and experienced in fisheries, not practicing law, for instance?

Anybody want to touch that hot potato?

Mr. Jernigan. Yes, sir, I would like to touch that. I think what you need is a manager. I do not think that the man has to be a fisheries biologist. I do not think that the man has to be even thoroughly experienced in fisheries. I think it needs to be a person who knows how to manage.

Let me give you an example. When the Magnuson Act was passed in 1976, it said that you would calculate or you would generate OY by taking into account economic and other measures and applying it to MSY. As of less than a year ago, the National Marine Fisheries Service had not developed an agenda for generating economic information to be used in the development of a fishery management plan—12, 13 years after they were assigned the responsibility.

That is a management failure, and a person does not have to be a biologist or a scientist to do that.

Mr. McCulla. Yes, I would like to add also that we desperately need a leader down there in the regional director's position. I love the idea Senator Stevens had. You were out of the meeting. He brought up about us possibly being able to generate some revenues through a fish stamp or other areas in the Gulf to get some more funding for National Marine Fisheries Service and the states to work in cooperation with the Federal government, to give us some landings data, some on-board surveys, some underwater surveys.

We desperately need this information to manage, and without the good information management tools are really hard to do.

And enforcement is a big problem also. Five port agents from Key West, Florida, to Brownsville, Texas. It is tough.

Senator LOTT. Thank you, Mr. Chairman.

Senator BREAUX. Let me ask one final question. I do not want to delay the panel, but what in the world is going to happen on the TED issue, turtle excluder device? Mr. McCulla, Mr. Jones, you could comment on that?

I mean, what a mess.

Mr. McCULLA. You can comment on that.

Mr. JONES. What is a TED?

That is I guess the most contentious issue I have ever seen in 25 years, Senator. As you know, we had a hearing in Tallahassee on Thursday last. We had 400 shrimpers in the audience. The state was considering requiring TED's in all state waters all the time, which they subsequently did.

When I got up to say a few words, I said: If there was not a problem and if the TED's were working to where there was not a significant loss of shrimp, these people would not be in the room, and they would not.

What we have in the situation is, we have some TED's that work on specific bottoms, on specific types of shrimp, at specific times of the year. But there is no TED that will work in all of the different bottoms in the Gulf of Mexico.

A main problem that we had in this process is, under the protocol or under the rules and regulations the only way you can certify a new TED is to take a shrimp boat to Cape Canaveral, put the nets on either side, go up and down the channel, and if you can eliminate 30 turtles in a device you are trying to test then it is certified.

If you cannot eliminate a statistically significant enough number, then it is not certified.

Under the regulations, this is the only way we can get a TED certified. Today and for about ten days, we do have the National Marine Fisheries Service, we have a team of divers, video people, scientists, the whole bit, at a place called Shell Island in Panama City, where the water is very clear. They are trying three new TED's that are of the soft TED variety, which seems to be the type of TED that will be readily acceptable by the shrimper, because it is cheaper, it does not hit them in the head, and hopefully it does not lose shrimp.

After these tests are completed in ten days, we hope that we will be in a position to say, these three TED's are another alternative for you to use and that they will pick them up.

We are just hoping that the industry will abide by the law. They do not like to pull the TED's. They do not like to do anything different than they have done for 100 years. But the law is the law, and they need encouragement to abide by the law and come up with some other device that will work better.

Senator BREAUX. Mr. McCulla.

Mr. McCULLA. We are going to have problems, no doubt about it, Louisiana. You are from Louisiana, you know how these people are. They are proud people. They work hard. They do not have anything given to them. And this is going to cause a lot of problems for the Coast Guard, National Marine Fisheries Service, and the Federal government.

They are just saying they are not going to do it, and when these people say they are not going to do it they are not going to do it. They are not buying them. They do not have them on their boats now.

It is just going to be a big problem. It is going to be a lot of people put in jail, out of business, and the Federal government is going to own a lot of shrimp boats, from the way it is looking out there right now.

And I wish there was some way we could get to these people and tell them they need to do it. But it is just not working right now, Senator.

Senator BREAUX. Mr. Jones, you made some good points about research and some testing that is being done right now, about new models that may work a lot better than the solid, more cumbersome devices. Would you recommend that we statutorily give some more time until those things are available, until that research has been completed?

We have got the National Academy of Science now holding closed meetings in the Gulf Coast on this issue. Would it be beneficial to provide more time until we get more data on what may be available?

Mr. JONES. Well, I have to support that, because any time we can buy additional time enough to put the device in would be what the industry wanted.

But I think it has gotten to a point, Senator, that we have a picture a day either in the Tampa Tribune or any of the papers in Florida showing a turtle on the beach. That is a fact of life. Whether a shrimper did it or whether someone else did it, there is a dead turtle lying on the beach.

Senator BREAUX. It is not the same turtle?

Mr. JONES. No, different ones. It might be the same picture.

But I think the public opinion is so strong and so sharp at this particular time that, if it is delayed, it is probably going to cause a tremendous amount of problems.

Senator BREAUX. Well, it would only delay it for the purpose of having something constructive happening in that interim period. You were talking about some tests that are ongoing right now as we meet here.

Mr. JONES. Yes, sir. I totally support it. And what we are going to do after the tests occur, if they are successful we are going to be coming back asking you to help us move the National Marine Fisheries Service to do a new protocol to certify them, because right now they cannot.

But I think if we do a good device and if you all get on them a little bit, then I think they will certify it, Senator.

Senator BREAUX. Gentlemen, I want to thank this panel very much for your being here and thank you for your testimony. I think it has been very helpful.

I would like to welcome up our next panel.

Senator **Gorton**. Mr. Chairman.

Senator **Breaux**. Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator **Gorton**. Mr. Chairman, I regret that I am going to have to leave and not hear the panel from my own part of the country. I have an appointment with the White House, and you do not lightly miss those when they are of importance.

I do want to say that I have had an opportunity to look at their written statements and read letters and statements from others who are not able to be here today on these really important subjects.

There is not any other industry, I do not believe, that has experienced the rate of growth that commercial fishing has had in the North Pacific in the last three years. To think that this industry now contributes twice the economic benefits just to the Washington State economy that it did three years ago is astounding.

Even more astounding is the raw data—$3.1 billion in direct and indirect impacts and more than 36,000 jobs. It is a great success story. Who would have thought just a few years ago that U.S. fishermen would have the capacity to harvest the available groundfish in the Bering Sea and almost all of the resource potential in the Gulf of Alaska?

But with success come many questions about the future. The conflicts that are going to be aired here are not small ones. They are vital to people's livelihood. They are vital to the protection of the resource.

I look forward to reviewing the testimony here today and working with all of the interested parties in these issues. Senator Packwood, I think, has already mentioned that he and I and Senator Stevens have asked to have additional hearings on this subject in the Pacific Northwest.

But I want to apologize both to Washingtonians and Alaskans, but this is an opportunity downtown that I am afraid I cannot avoid or miss. But welcome.

Senator **Breaux**. Thank you very much, Senator. We certainly understand. We thank you for your comments and your participation in the hearings.

I want to welcome: Mr. John Peterson, who is Chairman of the North Pacific Fishery Management Council; Mr. Arni Thomson, who is Executive Director of the Alaska Crab Coalition; Mr. Dave Harville, Kodiak and Western Trawler Group; and Mr. Edward Evans, who is the Executive Director of the Alaska Factory Trawler Association.

Mr. Peterson, glad to have you back. Welcome to the committee.

STATEMENT OF JOHN G. PETERSON, CHAIRMAN, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. **Peterson**. Mr. Chairman, thank you very much.

My name is John Peterson and I am Chairman of the North Pacific Fishery Management Council, and I appreciate the opportunity of being here today.

The North Pacific council is responsible for those very large and very valuable fish resources in the Gulf of Alaska and the eastern Bering Sea. The fisheries in those waters produce over five billion pounds of edible seafoods each year, which roughly equals that taken by all other states combined.

Several important issues are currently before the council. First, our council has proposed the addition of a new purpose to Section 2 of the Act that provides for the elimination of driftnet salmon interception on the high seas, and we request your support for this amendment.

Second, with the phasing out of the foreign observer programs, we no longer have adequate information upon which to base sound management decisions. The council is unable to meet its obligations under the Act without a comprehensive data collection system with adequate observer coverage and properly funded.

Proposal number 12 in the council chairmen's package removes the current limitation in the Act that fees not exceed administrative costs, hereby allowing the councils to establish regional cost recovery programs to fund these urgent needs. In this regard, Congressman Young has introduced H.R. 1554, which seems to come very close to the mark in solving this problem.

Third is the ongoing problem of the unrestrained fishery on pollack in the donut hole. Over 1,300,000 metric tons of pollack were harvested last year by Japan, China, Poland, and Korea, which is an amount equal to the total pollack harvest in our zone.

The council has urged the Secretary of State to move quickly and decisively to control these foreign fisheries, and yet there does not seem to be a meaningful plan of action in place. We ask your help in prevailing on the State Department to bring these foreign fisheries under control in order to protect that resource and the U.S. industry that depends upon it.

Fourth, although the council has been considering limited access systems and analyzing them, industry has expressed strong opposition to such systems.

Fifth, for years the council has searched for a solution to the ubiquitous and complex bycatch problem—problems, I should say; it is plural, it is not singular. Programs calling for allocation of fixed limits of the bycatch species are currently being used, but in-season control is difficult due to the rapidity with which certain fisheries develop. The use of time-area closures to eliminate hot spots with moveable boundaries is currently being studied and may be helpful.

Sixth, the issue of in-shore/offshore priorities requires extensive analysis to determine the most rational solution. Such analyses must determine, among other things, capital investment, employment, alternative species availability, competitiveness in international and domestic markets, identification of benefits, and where and to whom those benefits accrue.

Seventh, the need to eliminate waste due to roe-stripping operations is before the council, with action expected before year end.

Eighth, on the oil spill disaster, the council is concerned with the presence of toxic fractions of crude oil in the water column in spawning areas of such valuable species as pollack and cod.

All these issues are highly charged and will require difficult decisions by Council members. And regardless of the final decision, some segment of industry will undoubtedly have a bad case of heartburn and come running to you for help. However, seldom will all sides of these complex issues be made clear to you. Therefore, I urge you to continue to prevail on industry to solve their problems regionally through the Council system. This is also the current thrust of NOAA Fisheries.

I want to assure you that the Councils work very hard to make the best decisions possible and I sincerely hope you will continue to have confidence in our recommendations to the Secretary of Commerce and in the Magnuson Fishery Management and Conservation Act which you helped to craft.

I also call your attention to the funding document attached to my testimony, which identifies seven critical funding needs that are supported by 19 major fishing, processing, and marketing associations of Alaska, Washington, Oregon, and California.

This document was presented to a subcommittee of the House Appropriations Committee on April 13th and to the House Merchant Marine and Fisheries Committee on May 2nd. The funds requested are integral to the solution of many of the issues highlighted today.

All of these issues are highly charged and require difficult, almost gut-wrenching, decisions by council members. Regardless of the final decisions, some segments of the industry will be dissatisfied and will request your help.

Please prevail on them to resolve their problems regionally through the council system, and also please be assured that the council will continue to work very hard to make the best decisions possible and to justify your confidence in our recommendations to the Secretary of Commerce and your confidence in the Magnuson Act.

I understand you are planning to hold regional hearings in Seattle and Alaska, and I commend you for that. They will be very useful.

Thank you very much, Mr. Chairman.

[The following information was subsequently received for the record:]

Questions from Senator Packwood for Mr. Peterson

(1) It has been suggested that the decision about the total permissible catch, from a biological standpoint, should be clearly separated from the allocation question about who should be permitted to catch it, from a social and economic standpoint.

-Do you agree with that suggestion?

-If so, who should decide the allocation question?

-What criteria should be utilized to decide how much of a biologically permissible quota should be allocated to each group of sportfishermen, seiners, trawlers, etc., all of whom are competing for the same fish?

(2) With regard to membership on the Councils, Section 302(b)(2)(A) of the Magnuson Act requires that the Secretary, to the extent practicable, ensure a fair apportionment of seats to representatives of the active participants in the fisheries.

-What do you think that phrase, "fair apportionment" should be interpreted to mean?

-Should the Secretary be required to take a snapshot of the fishery, analyze the relative proportion of sportfishermen, seiners, trawlers, etc. engaged in it, and ensure the same proportional representation on the Council?

-If not, how should it work?

(3) The fisheries of the North Pacific are evolving, and the types of vessels and people participating in them are changing as a result of various provisions of the Act.

-Is the Act adequate to guide decisions about how the fisheries evolve?

-For example, jv fishermen will be phased out shortly as a result of provisions in the Act, and many domestic trawlers without processing capability may be unable to compete offshore with domestic factory trawlers. Should the phased-out trawlers enter the nearshore fisheries that are already being fully utilized? Should they be forced to go out of business? What is the national interest here, and who decides? What do you view as NOAA's role in guiding the evolution of the fisheries?

RESPONSE BY JOHN G. PETERSON, CHAIRMAN OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL, TO QUESTIONS RAISED BY SENATOR PACKWOOD FOLLOWING THE SENATE COMMERCE COMMITTEE HEARING ON MAY 18, 1989.

1. Yes, I believe that decisions on the Acceptable Biological Catch (ABC) should be clearly separated from those on allocation. Further, the determination of ABC levels must be based on the best scientific information available. The North Pacific Council operates consistent with this separation. Last week's decisions on pollock and Pacific cod in the Gulf of Alaska exemplify the Council's concern for conservation. Industry had requested the Council to take emergency action to raise the harvest levels for these two species to match their production requirements for the rest of 1989. The Council followed the advice of its scientists and did not raise the quotas above biologically safe levels.

Our public record is replete with other examples of placing conservation first. For instance, as the pollock resource declined throughout the Western and Central Gulf of Alaska, the Council decreased the catch quota from 400,000 mt in 1984 to 60,000 mt this year in response to the best scientific information available. Other groundfish species quotas also have been set in accordance with the principle of conservation first. The Council has maintained the two million metric ton cap on Bering Sea and Aleutians groundfish harvests in part because of the unknown biological impacts of unregulated foreign harvests of pollock in the Central Bering Sea outside our EEZ, the lack of a comprehensive at-sea observer program on which to base an accurate assessment of bycatch and discard, and the potential impacts of a large groundfish fishery on high-valued species such as crabs and halibut.

On allocation issues, the Council makes its recommendations to the Secretary of Commerce who makes the final decision. The Council's recommendations are based on a thorough review of available information, reports from Council staff, the Advisory Panel, the Scientific and Statistical Committee and testimony from interested members of the public. Considering the alternatives, I believe that our Council's process is the best arrangement available for making these contentious allocative decisions.

Allocative decisions are based on economic, social and ecological factors. The Act addresses this matter in National Standard #4 by stating that such allocations shall be:

A) Fair and equitable,
B) Reasonably calculated to promote conservation, and
C) Carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privileges.

It is further stated that, "Conservation and management measures shall not discriminate between residents of different states." Further guidance is provided in the definition of Optimum Yield which "means the amount of fish -

A) Which will provide greatest overall benefit to the nation with particular reference to food production and recreational opportunities,
B) and which is . . . modified by any relevant economic, social or ecological factor."

These criteria are not very precise and therefore do not provide clear guidance in making allocative decisions. However, I doubt that specific criteria could be identified that would be more concise or more useful.

The North Pacific Council deals with many different types of allocative issues, each with its own characteristics. Although the existing guidelines are not exact, they are helpful and are utilized in the decision making process. However, human judgement based on the best information available is critical in the Council decisions. There is no easy way, and such decisions are not necessarily considered to be fair and equitable, especially by those groups that are perceived to come out second best. The existing system and the criteria used may well be the best method available.

2. The phrase "fair and equitable" clearly requires, to the extent practical, that Council membership reflect the make-up of the industry.

   There are eleven voting members on the North Pacific Council, including the NMFS Regional Director for Alaska and the State fishery directors from Alaska, Washington and Oregon. There are five appointed members from Alaska and two from Washington. Major segments of the industry are not represented since most factory trawler companies, shoreside processing companies and major fishermen's associations are based in Washington State. Since Washington State has only two appointed members, it is not possible to provide for fair apportionment.

   The profile of the industry has changed rapidly during recent years, and it would be unwise to have Council seats dedicated to any particular segment of this evolving and changing industry. At the present time for the North Pacific Council, "fair representation" would require representation of the following sectors: trawlers, longliners, crabbers, factory trawlers and shoreside processors. It would be very difficult to provide "proportional representation" of these industry segments because the basis for doing so is seldom, if ever, clear. Factors that would influence such proportional representation must include investment, employment, catch (value or volume), area (fishing or residence), and so forth. It's obviously very important that the Secretary be well informed on the make-up of the industry when selecting Council members to be certain major segments of the industry are represented.

3. The Act is probably adequate to guide Council decisions on the evolution of North Pacific fisheries, assuming Council members are sufficiently knowledgeable and experienced and use common sense.

   Amendments to the Act or decisions by the Council that perpetuate out-moded or inefficient operations cause more harm than good. In the case of the joint venture (JV) fleet, it has not been any secret that their operations would be phased out, and many JV trawlers have made the move to domestic markets of one sort or another, and apparently are doing very well. Many of the remaining JV trawlers ignored or refused domestic markets when available, and some never had the opportunity or were not properly equipped to do so. Remedies to help the remainder of the JV fleet may well be harmful to those trawlers who have already switched, and to continue the flow of cheap joint venture product into foreign markets would not be in the best interest of the U.S. processing and marketing industry.

   The last of the JV trawlers certainly have the option of entering other fisheries, and if they are competent fishermen they have every chance of success. If they do not, they will no doubt go out of business. As unfortunate as this might seem, the catharsis of bankruptcy is in the national interest. Certainly in these matters the private sector makes better judgments than the public sector.

   The role of NOAA should be as caretaker of our marine resources, not to guide the evolution of the fish industry. Research by competent scientists, properly funded, to generate and maintain a solid bank of information upon which to manage marine resources is the proper and essential role of NOAA. The responsibility of NOAA is to assure the maintenance of healthy fish resources on a sustained basis. the economic evolution of the industry will follow the most rewarding path as determined by a competitive and free market.

Senator **Breaux**. Thank you very much, John, for your testimony.

Mr. Thomson.

STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

Mr. **Thomson**. Good morning, Mr. Chairman.

My name is Arni Thomson. I am Executive Director of the Alaska Crab Coalition, known as ACC, a nonprofit trade association representing the owners of 70 Bering Sea crab-fishing vessels from Washington, Alaska, and Oregon. I would also add that our association represents three of the major Alaska shore-based crab processing companies.

On behalf of the ACC, I would like to thank the committee for the opportunity to provide an evaluation of current Federal efforts to manage the fisheries of the North Pacific, to identify issues of concern to the members of the organization, and to make recommendations for improvements to Federal management through improvements to the Magnuson Fisheries Conservation and Management Act.

I will focus on three areas of principal concern to the ACC: One, the need for more effective conservation; two, the need for improved scientific research, including increased data gathering, with as much as 100 percent observer coverage in EEZ fisheries; three, the need for improved procedures in the fisheries management councils and in the Department of Commerce to ensure timely and fair development and implementation of conservation and management measures.

In our comments today on bycatch and observers, we are supported by the Fishing Vessel Owners Association of Seattle, a longline association which harvests sablefish and halibut off the coast of Alaska in the 200-mile EEZ.

The ACC believes that Federal efforts to manage the fisheries of the North Pacific have reflected an insufficient commitment to the primary objective of the Magnuson Act—conservation.

All too often, management decisions have been driven by the demands of industry for economic development opportunities. From the opening of the Bering Sea crab pot sanctuary for joint venture bottom trawling as an experiment in 1981 to the lax implementation of emergency regulations for the protection of depressed crab and declining halibut resources in 1989, Federal managers have frequently favored economic expediency over environmental responsibility. They have wrongly chosen to regard resource conservation as economic allocation.

The ACC believes that Federal fisheries management has sacrificed conservation to serve trawl industry bottomfish development objectives. Critical habitats for depressed crab and declining halibut resources have been opened to bottom trawling on a massive scale. The resulting bycatch in trawl fisheries has been very high.

Federal pressures on industry to negotiate compromise resource management measures have been unfair and counterproductive. Reluctance of Federal managers to impose needed conservation restrictions on bottom trawling and to require meaningful observer coverage on factory trawlers has led to regulatory voids and information gaps.

Notably, I would like to point out that the Soviet Union has prohibited bottom trawling in sensitive crab habitats and has been rewarded with abundant crab harvests; and the State of Alaska has required 100 percent observer coverage on crab catcher-processors.

Crabbers pay for on-board observers as a cost of doing business with a public resource. The more profitable trawlers can also do the same.

Federal managers must face up to the fact that trawl development has carried many risks and costs: high bycatch mortalities for crab, halibut, herring, and salmon; massive discards of target species, 25 to 50 percent of the total catch; damage to crab resources by bottom trawl gear; damage to the benthic environment, which is the sensitive habitat of instar crab; killing of marine mammals by entanglement in trawl gear; pressures for increased harvests in response to overcapitalization.

Magnuson Act amendments are needed: one, to identify conservation as the primary management objective and to define conservation to include avoidance of waste;

Two, to mandate 100 percent observer coverage in EEZ fisheries, with the exception that councils can provide for a lower level of coverage if they deem that a lower level of coverage will be sufficient for scientific and other management purposes;

Three, to continue the National Environmental Policy Act requirements for conservation assessments by the councils and the Department of Commerce on all new management measures.

That concludes my testimony, Mr. Chairman. I would like to request permission to submit additional documents that elaborate on my statements.

I thank the committee for this opportunity and would be glad to respond to questions.

[The statement and questions and answers follow:]

STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

Mr. Chairman:

My name is Arni Thomson. I am Executive Director of the Alaska Crab Coalition ("ACC"), a non-profit trade association representing the owners of seventy Bering Sea crab fishing vessels and three of the major Alaska shorebased crab processing companies. On behalf of the ACC, I would like to thank the Committee for the opportunity to provide an evaluation of current federal efforts to manage the fisheries of the North Pacific, to identify issues of concern to the members of the organization, and to make recommendations for improvements to federal management through amendments to the Magnuson Fishery Conservation and Management Act.

I will focus on the three areas of principal concern to the ACC:

- the need for more effective conservation;
- the need for improved scientific research, including increased data-gathering through 100 percent observer coverage in the trawl fisheries; and
- the need for improved procedures in the fishery management councils and in the Department of Commerce, to ensure timely and fair development and implementation of conservation and management measures.

ACC believes that federal efforts to manage the fisheries of the North Pacific have reflected an insufficient commitment to the primary objective of the Magnuson Act -- conservation. All-too-often, management decisions have been driven by the demands of industry for economic development opportunities. From the opening of the Bering Sea crab pot sanctuary for bottom trawling in 1981, to the lax implementation of emergency regulations for the protection of depressed crab and declining halibut resources in 1989, federal managers have frequently favored economic expediency over environmental responsibility. They have wrongly chosen to regard resource conservation as economic allocation.

In recent months, federal managers have asked industry groups to take on the basic responsibility for fishery management in the North Pacific. Industry has been strongly pressured to develop regulatory schemes by negotiation. Not surprisingly, trawl industry representatives have been unable to reconcile their commercial interests with the fundamental conservation concerns of the pot and longline groups. Federal managers have been slow to respond, and bottom trawl fisheries in critical crab and halibut nursery grounds have been allowed to operate for months in a regulatory void. This has hardly provided a level playing field for those asked to negotiate fair and reasonable compromises; fixed gear groups rightly feel that they have been placed at a severe disadvantage. Worse still, the measures which eventually have been adopted by federal managers have been insufficiently stringent to satisfy basic conservation needs.

This is a case of fisheries management by default. Federal managers must assume greater responsibility for conserving fishery resources. The appropriate role of industry is to advise government regulators. The responsibility for managing public resources lies with officials in positions of public trust. It is unreasonable for government to demand that competing industry groups make resource management decisions. It is unfair of government to withhold regulatory action which is sought by one side and resisted by another, but which is clearly warranted by the depressed condition of the resources and the clear intent of the law. Consensus among industry representatives simply cannot be expected, when commercial interests and philosphical views are fundamentally at odds. Federal managers must be prepared to decide promptly and fairly on the measures to be taken, and must ensure that conservation goals are achieved. Regulatory procedures must foreclose environmental irresponsibility.

Mr. Chairman, federal managers must be faulted on another point. Foreign fleets have long been required to have 100 per cent observer coverage; domestic fleets have not. The displacement of foreign fishing vessels by the domestic factory trawlers has had the effect of depriving federal managers of needed fishery data, but the government has done little to respond. Observer coverage in the trawl fisheries has declined to unacceptably low levels. It is time for the federal government to require that all vessels which have processing capacity take observers aboard to collect vitally needed data.

It is also time for federal managers to ensure that observer data is made available to the public in a complete and timely manner; confidentiality restrictions have, we believe, been exploited by trawl groups to deprive the public of the information it should have about its own resources.

Recent attempts by the National Marine Fisheries Service to secure federal matching funds for observers aboard trawl vessels have obscured the fact that on-board data gathering can and should be regarded as a cost of doing business. After all, the reality of the matter is that public resources are being taken for private profit. Those who directly benefit from fishing should bear the cost of providing the data by which the public interest in resource conservation is secured. Federal funds should be dedicated principally to scientific analysis and resource management, which are the essential responsibilities of government.

There is ample precedent for such an approach. The State of Alaska requires 100 per cent observer coverage on crab catcher/processors, and the cost is borne by those who are privileged to take public resources for private gain. The economics of the bottom trawl fisheries are such that the cost of observer coverage can easily be borne by those vessel owners, as well. We estimate the cost of 100 per cent coverage at less than .75 per cent of gross revenues for each factory trawler. I suspect that the factory trawl fleet resists paying for observer coverage, because it anticipates future economic problems as a result of increasing overcapitalization. However, it is not the responsibility of the tax paying public to provide a subsidy to the factory trawlers in the form of federal funding for observers.

I should also point out that the use of Saltonstall-Kennedy funds for trawl industry research has been of very doubtful value. A recent project, ostensibly aimed at improving trawl net designs to reduce crab bycatch, failed to produce a technology that would attract substantial use in the commercial fisheries. However, those involved were successful in securing a second fishing season -- complete with a federal subsidy for their commercial trawling operations.

Moreover, NMFS' research priorities have placed too great an emphasis on trawl opportunities, such as the cod fishery at Pt. Moller. Little has been done by NMFS to provide research on conservation in the directed crab fisheries. In fact, ACC members have initiated and agreed to fund such research, because there seems to have been no alternative.

This severely critical evaluation of federal management reflects the intensity of our concerns. We believe that it is time for the federal government to face up to some harsh facts. Americanization of the vast bottom fisheries of the North Pacific Ocean, although a laudable goal and a great achievement, has not been without risk, and it has not come without cost.

The Bering Sea crab pot sanctuary, long closed to foreign trawlers by agreement, was opened to American trawl vessels with the aim of stimulating the growth of our bottom fishing industry. Unfortunately, the protection of that most critical crab nursery ground was sacrificed. The American trawl industry took full advantage of the opportunity to harvest valuable bottomfish, but at the same time inflicted substantial damage on the now severely depressed crab resources. Notably, the Soviet Union has maintained bottom trawl closures in critical habitats of the Sea of Okhotsk, and has been rewarded with a rich abundance of crab resources.

In recent years, foreign trawlers and domestic fishing vessels delivering to foreign motherships have been subjected to progressively more stringent restrictions aimed at the conservation of bycatch species. However, the burgeoning American factory trawler fleet has been permitted to operate more freely. Consequently, the factory trawlers now resist the kinds of measures that must be applied to all bottom trawling, if non-target species are to be effectively conserved.

Mr. Chairman, the pendulum has swung too far in the direction of development in the Bering Sea bottom fisheries. Federal managers must no longer permit, much less encourage, bottom trawling, when the affected bycatch species are in such poor condition that directed fishing is either prohibited, as it was in 1985 and 1986 for C. bairdi crab, or severely restricted, as it has been for many years for king crab, and soon will be for halibut. This is not primarily an issue of allocation. This is first and foremost a matter of conservation.

Federal managers must also face up to the fact that the American trawl fleet, which they have long nurtured, engages in fishing activities which are not just wasteful of bycatch species. The use of trawl nets, for which there are no mesh size restrictions, results in massive discards of target, as well as non-target, species. It is reliably reported that fully one-quarter to one-half of the trawl catch is discarded -- thrown, dead, back into the sea.

Furthermore, it is reasonably estimated that, in bottom trawling operations, the "unobserved" bycatch of crab is ten-to-fifteen times the bycatch found in the nets. It is assumed that the mortality of crabs crushed beneath the trawl gear is very high. That mortality likely exceeds the level experienced in the nets.

Underwater camera observations of the operation of bottom trawl gear leads many experienced fishermen, scientists, and other informed observers to conclude logically that slow-moving bottom dwellers, such as crabs, are unable to evade trawl gear moving at the speed of 3 to 4 knots. Gear damage to juvenile "pods" -- as many as 10,000 - 20,000 juveniles will mass together for predator protection -- can have a devastating impact. Trawl gear damage to king crab during the soft shell molting season is also recognized to be severe. It is extremely disturbing that federal managers are ignoring these impacts.

The effect of trawling on the benthic environment is also believed to be quite significant. Crab in the first stage find refuge from predators by crawling into the subsurface layer of the seabed. Bottom trawling in crab nursery areas thus may have a very detrimental effect on crab survival rates. More research is needed on this and other related matters.

Habitat studies are particularly important. We believe that there should be more funding for the NOAA Outer Continental Shelf Environmental Assessment Program and that NMFS should give more attention to habitat issues. OCSEAP has already yielded useful data on the sensitivity of crab nursery areas. NOAA/OCSEAP considers the North Aleutian shelf to be the primary habitat for king crab and is concerned about bottom trawl impacts. The Chairman of the North Pacific Council, in a letter to President Bush concerning Lease Sale 92, also acknowledged that the habitat in that area is critical to crab, and to halibut, as well. ACC finds it difficult to understand why federal management does not adequately reflect the singular importance of that habitat.

Before leaving the subject of trawl impacts, a few clarifications are in order. The trawl industry maintains that all fishing groups, no matter what gear they employ, inflict bycatch mortality. This is true, but the impacts vary greatly among the gear types. Trawlers, by the nature of their non-selective gear, inflict mortality not only their target species, but also on the target species of most other gear groups. Thus, trawlers impose direct costs on other sectors of the industry by reducing the immediate and future harvests of the other gear groups.

Fixed gear fishermen, employing pots or longlines, have little impact on non-target species. The bycatch of this gear, principally juveniles and females of the target species, represent foregone future harvests for the fishermen who are responsible. Consequently, these gear groups have a vested interest in minimizing bycatch mortality through gear design and fish handling techniques, as well as through strict quotas and time and area closures. In sum, fixed gear does not impose direct costs on the trawlers' target species. Moreover, the bycatch mortality in the pot and longline fisheries is far below that experienced in trawling operations.

I would also like to call your attention to the fact that pot and longline fisheries are in "Catagory III" of the new Marine Mammal Protection Act regulations, that is, in the catagory reserved for gear types that have only rare interactions with marine mammals. Bering Sea trawlers are in Catagory I, the class of worst offenders. The record of trawlers in killing depleted fur seals, among many other marine mammals, speaks for itself.

In one respect, federal policymakers and managers have been too successful. The fifty-vessel factory trawl fleet, which they have assisted to develop, is now overcapitalized. Indeed, forty more factory trawlers are in the pipeline and will soon enter the already crowded fisheries. Trawl industry pressures for a greatly increased optimum yield in the bottom fisheries are already being felt by federal managers. Indeed, a lawsuit has been filed by various trawl groups in federal court to compel a fifty per cent increase in the OY. Fears of economic collapse in the trawl sector are thus giving rise to demands for less conservative management. The wasteful process of roe stripping, about which this Committee will doubtless hear a great deal, is yet another manifestation of the problem.

In light of the concerns which have been outlined in my testimony, the Alaska Crab Coalition proposes that the Magnuson Act be amended as follows:

- Conservation should be expressly identified as the first priority of fishery management, and should be defined expressly to include the avoidance of waste. This would clarify what we believe to be prevailing congressional intent. Congress should make it clear, perhaps through Committee report language, that the waste of non-target and target species should be constrained to minimal levels and, in normal circumstances, bycatch should not be permitted at levels which exceed the permissible directed catch.
- One hundred percent observer coverage for vessels having their own processing capability should be required in all fisheries. In addition, at-sea transfers of fish should be prohibited, unless subject to full observer coverage.
- Lastly, the councils and the National Marine Fisheries Service ("NMFS") should be required to carry out a conservation assessment, including an evaluation of waste, with respect to each management decision, in order to ensure that the primary goal of the Magnuson Act is properly considered. In particular, any

decision to relax a conservation measure should be justified by reliable data and analysis. Environmental assessments have proved to be inadequate; additional statutory safeguards are in order.

Before closing my testimony, I would like to temper my criticism of federal managers in one respect. The ACC welcomes the recent appointments of Mr. Brennan as Assistant Administrator for Fisheries, NOAA, and Mr. Pennoyer as Regional Director for the Alaska Region. We have the highest regard for the abilities and dedication of these men. As they gain experience in their new positions, we hope that they will rededicate their agency to the principles of responsible fishery management. To that end, we pledge our full cooperation.

Mr. Chairman, I have a number of documents which further describe and more thoroughly analyze the concerns I have identified in my statement. I respectfully request that those documents be included in the hearing record.

Again, thank you for the opportunity to appear before the Committee. I would be pleased to respond to any questions.

ALASKA
CRAB
COALITION

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June 26, 1989

The Honorable Ernest F. Hollings
United States Senate
125 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hollings:

I am pleased to respond to questions from Senator Packwood, which I received under cover of your letter dated June 6, 1989. I am delighted that the information I am providing will be included in the record of the hearing before the Commerce Committee on May 18. I hope that my response, which I am providing on behalf of the Alaska Crab Coalition, will be useful in developing legislation to reauthorize the Magnuson Fishery Conservation and Management Act.

(1) Under prevailing law, regulations, procedures and practices, the optimum yield for a fishery is determined on the basis of economic and social considerations, as well as biological and ecological factors. The total allowable catch is derived from the OY. In the context of fisheries of the Bering Sea and North Pacific Ocean, the determination of the allowable catch of bottomfish is not clearly separated from the question of who should be permitted to participate to what extent in the fishery. For ACC and other groups which target on species which are bycatch in the bottomfish fisheries, that issue is not of real concern. Rather, the more important problem is the fact that the allowable catch of bottomfish is determined in a manner that is insensitive to biological, economic and social impacts on bycatch species and the fishing groups which rely on the availability of those species for directed fishing. Thus, there may be an allowable catch of bottomfish and a substantial resulting bycatch of crab, halibut and herring, while there may be no directed fishing allowed on one or more of those bycatch species for biological reasons. Of course, the permitted bycatch may prolong the closure of directed fishing on the affected species, by retarding biological recovery. The economic and social consequences are, thus, quite

real, but are not considered. In the absence of effective bycatch management, any increase of the allowable catch of bottomfish, fishery-wide or by area, can be expected to have significant collateral effects that should be fully considered. Separation of biological from economic and social matters in that process would aid the analysis.

The Regional Fishery Management Council is probably best suited to determine allocations, subject to federal standards. Furthermore, such decisions should be made in consultation with other affected management organizations.

The criteria for determining allocations of species which are taken as bycatch and in directed fisheries should give priority to the fishing groups which depend upon those species as target fisheries. There is simply no way to justify a large bycatch of a species when the directed fishery for it is closed or is subject to severe restrictions. Any allocation scheme must equitably divide whatever is determined to be available for harvest. Furthermore, bycatch waste should be disfavored in the determination of such allocations.

(2) "Fair apportionment" should start with the offices of the State Governors, where lists of candidates for Council positions are drawn up. It may be reasonable to require the Governor to take a snapshot of the fisheries and to justify to the Secretary the list of candidates in the first instance. The Secretary would then review both the list and the basis upon which it was drawn up, before making selections. In the event that the Governor failed to achieve an acceptable result, he would be asked to submit a revised list and supporting assessment of the fisheries. An elaboration of standards by the Secretary would assist the Governors in their task.

(3) The evolution of the fisheries of the North Pacific is cause of major concern among affected groups of fishermen and fishery managers. Private investment decisions are being allowed to determine the allocation of public resources, without sufficient regard to important public values, such as economic and social stability. Both decisions have resulted in massive overcapitalization of the trawl fleet,

particularly in the factory trawl sector, and in dislocation of other established sectors. Moreover, these decisions have increased pressures on fishery managers to permit fishing practices which adversely affect stocks of fish that are already in poor condition or are declining. Equally important, the public interest in conservation of public resources have been subverted to serve the financial interests of private investors. The Act should be clarified to ensure that conservation will be secured, so that long-term economic and social interests are not defeated by short-term private financial interests. Latecomers to the fisheries have not been guaranteed the right to displace those who have been longer established, and the Act should provide a mechanism to place financial risks on the participants who have most recently made the decisions to invest. This is particularly the case where new investors impose costs not merely on others in the same fishery, but also on those in other fisheries that have been fully developed, such as crab, halibut, herring, and salmon. In those contexts, any constraint imposed on the newcomers should not be regarded as having the effect of inappropriately limiting economic efficiencies. Finally, it should be noted that, while the Congress did seek to encourage development of the bottomfisheries by American interests, Congress did not intend to disadvantage other Americans in the process. New entrants were not given carte blanche; their equities must be limited by the interests of others.

Again, thank you for inviting me to testify before the Committee. With best regards.

Sincerley,

Arni Thomson, bw

Arni Thomson
Executive Director

AT:bw

Senator **Breaux**. Thank you very much, Mr. Thomson.

Next we will hear from Mr. David Harville. David.

STATEMENT OF DAVID HARVILLE, OWNER, KODIAK AND WESTERN TRAWLER GROUP

Mr. **Harville**. Mr. Chairman, members of the committee:

My name is David Harville, from Kodiak, Alaska. I own Kodiak and Western Trawler Group.

I appreciate this opportunity to appear before your committee and share my concerns about the future of the Alaskan coastal communities and the pioneer North Pacific groundfish harvester from all communities, from all states.

I am the owner of several trawl vessels involved in bottomfish in Alaska. In that light, I consider myself a pioneer and an expert in the field. I feel I have a vested interest in the future and the well-being of the Alaska groundfish industry.

On April 27th, 1987, I had the pleasure of appearing before this same committee during the reflagging hearings. In my testimony I asked what was going to happen to those harvesters who pioneered the Americanization of this huge Alaskan resource?

The answer I received during the same testimony from Congress was that you did not really know, but that we would not be forgotten. I would like to submit to you that the Congress of the United States now has a golden opportunity to remember this commitment.

A quite significant portion of the high seas harvesters have in fact found employment—ex-JV harvesters—have in fact found employment with the strongly emerging Alaskan shore-based processors.

These processors are based primarily in Washington, with branches all over the Pacific Northwest, mostly in Alaska. The vessels are based, as in the JV days, in several ports in Alaska, Washington, Oregon, and California. They are providing employment for thousands of Americans and providing stable cash flow for such ports as Kodiak, Sand Point, Dutch Harbor, and Akutan.

Not since the cyclic decline of the shrimp and crab resources have the Alaskan coastal communities enjoyed such prosperity. The groundfish industry has provided stabilization and a steady work force to the communities, so that other fisheries which are more seasonal in nature have a stable and experienced work force on which to call.

However, now, with the unrestrained overcapitalization of the at-seas catcher-processor fleet, the potential to overwhelm the resource and leave the coastal community devastated has occurred.

If the catcher-processors were allowed to take all the fish which they claim they need and they project for the future, there will be none left for the shore-based processors or for the at-sea harvesters. The total disregard for local communities was brought to a head in the spring pollack fishery in the Gulf of Alaska when a small fleet of catcher-processors caught the fish in eleven days that would have lasted the Kodiak shore-based plants the rest of 1989 and provided employment for 2,000 people ashore, thus effectively putting the shore-based pollack industry out of business, perhaps for the rest of the year.

Internationally, the precedent has been set. All over the world, governments have recognized the rights of local coastal communities to priority access to the nation's fisheries resource.

Most nations who have a longer history in fisheries than we do and may perhaps be more enlightened have protected shore-based communities from at-sea catcher-processors. The shore-based communities have to rely on the resources around them to survive.

The U.S. should follow this lead. I feel very strongly that shoreside communities should have a first priority to the fish in their waters.

Part and parcel and part of the above-mentioned is the wanton waste of resource by the at-sea processors, primarily in roe-stripping of pollack and in the roe fishery, where everything but roe-bearing females is discarded. There is no accountability, as there was in the JV days with observers. There is a tremendous lack of data.

I feel that fishing for roe only or roe-bearing females only or fishing for high-value species and discarding other usable fish because of space requirements, freezing requirements, or time requirements must be stopped.

We have been fighting for observers in all fisheries. One of the problems has been funding. In Kodiak we have solved that problem; we fund our own observers. We have a program going with the State Department of Fish and Game in which those of us who still have markets are paying our way.

And if we can do it with 70 and 80 and 90-foot vessels, I submit to you that the 100 and 150 and 200-foot and 300-foot catcher-processors can pay their way, too.

I think you will find the general feeling in Alaska is that we demand, we do not ask, we demand that catcher-processors fund theirself for 100 percent observer coverage.

Because it is my understanding that the Magnuson Act dictates the highest and best return to the nation, I submit that "the best and highest return" refers to the most employment, the most distribution of moneys into the economy, and the most careful conservation of our resource. Perhaps the last should be the first.

I feel that because of the nature of the North Pacific management council and because of the fact that they are still fighting a bycatch issue which has gone on for years, and because they are still fighting a ridiculous limited entry project which has been going on, it does not have the time to address this problem.

I do not think that they can react fast enough. I feel that the Congress, with their ability to look at the overall picture and through the reauthorization of the Magnuson Act, may be the place to bring some sanity into this chaotic situation.

One last thing I would like to address. In my testimony of April 28, 1987, when I was asking that reflagging be allowed, I alluded to the legality of creating processing plants by bringing processing vessels ashore, tieing them to local infrastructure, and making them immobile. While reflagging was stopped, this problem was not addressed.

Right now I know of several foreign entities, three to be exact, who have on the drawing board plans to bring their wholly foreign-owned factory processors to Alaska and do just this.

Either because their own stocks have collapsed or because their governments have excluded them to protect shore-based operations, they have to go somewhere. This fact has been related to me by five different groups of fish people from Northern Europe. They are bringing their money to the United States because their own nation does not want them to keep it there.

It is my understanding that beaching a foreign processing ship for use as a U.S. shore-based processor, even in fact retaining 100 percent foreign ownership, is perfectly legal, and I certainly hope that Congress will address this problem and plug this existing loophole.

These problems I feel can be addressed in the reauthorization of the Magnuson Act and I wholeheartedly request that action be taken.

Thank you.

[The following information was subsequently received for the record:]

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REPLY TO SENATOR PACKWOOD'S QUESTIONS
OF DAVE HARVILLE
FOLLOW-UP TO MAY 18, 1989, SENATE COMMERCE COMMITTEE HEARING
ON MFCMA REAUTHORIZATION
SUBMITTED JUNE 15, 1989

1. Total permissible catch vs. allocation

I definitely agree that the decision about total permissible catch, from a biological standpoint, should be clearly separated from the allocation question.

At the North Pacific Fishery Management Council the decision on total permissible catch is made by the scientists at the Northwest and Alaska Fisheries Center and undergoes peer review through the Plan Team and Scientific and Statistical Committee.

I have never known the council to exceed the total permissible catch recommended by the scientists and would argue strongly against ever breaking this tradition.

On the question of allocation, I feel this is a political and socio-economic issue which should be handled by the councils according to Congressional guidelines and/or policy. With the processor preference amendment Congress made its intention clear when the allocation was between U.S. fishermen delivering to foreign processors and U.S. fishermen engaged in solely domestic operations.

Other language in the MFCMA seems to indicate some concern on the part of Congress for the welfare of coastal communities, traditional fishermen and, without differentiating among them, the States.

Personally, I feel the first criteria in allocative issues should be the welfare of the resource. This is already mandated by Congress.

To me this means those groups whose catch is most accurately monitored, fishing methods which best distribute effort over the entire stock and over time, and fishing methods which result in the least waste should be encouraged at the expense of other methods or groups.

Pulse fisheries which impact small segments of the stock, I feel, are most destructive.

Decades ago the State of Alaska prohibited trawling for crab in favor of pot gear for conservation reasons.

Member
Alaska Draggers Association
Alaska Groundfish Data Bank

Beyond conservation, there has never been a clear policy, though management has traditionally tended to favor those fishing methods which allow for maximum involvement by the public (since fish are a common property resource) and encourage small business units rather than concentration of the resource in the hands of a few large business units.

This is contrary to the evolution of the oil and timber industries which also use common property resources, but, in the case of fish, a policy I feel is workable and better serves the public and the resource. It was this approach which allowed the NPFMC to prohibit pot boats for black cod in the Gulf of Alaska in favor supporting the longline fishery.

This tradition was also followed when Alaska introduced limited entry into the salmon fishery, but insisted that the permits could only go to real individuals, not corporations.

When maximum public involvement is considered, the amount of work generated in the processing plants should also be a factor which is considered as well as the importance of the income generated by the resource to communities as a whole.

When allocations between commercial gear groups are made, the utilization of the resource as a whole should also be considered. For example, in the Gulf of Alaska trawlers retain the right to take 20% of the black cod quota in recognition of the fact that, in order to harvest Pacific cod and deep water flounders and rockfish trawlers will have a catch of black cod and also in recognition of the fact that the higher valued black cod offer financial assistance to trawlers developing lower valued species.

With these criteria
1. Best conservation
2. Maximum public involvement
3. Work in the processing sector
4. Economic welfare of involved communities
5. Preference for small business units
6. Ability to harvest the entire available resource

most allocative decisions can be made.

When all these criteria fail to point clearly to a specific gear group in the commercial fisheries I feel industry itself should negotiate the allocation.

Sports fishermen vs. commercial fishermen has been a more difficult problem, particularly on the East Coast. Except for the Kenai River, we have had little experience with the problem here. Kodiak's response was stated by the Fish and Game Advisory Board a number of years ago -- "We are a commercial fishing community and priority goes to our industry."

A community which feels it will gain more economic benefit from sports fisheries rather than commercial fisheries might have a different answer. I really don't feel qualified to say more on this issue.

2. Council membership

I think it is disastrous to allow council membership to degrade to a group of people each "representing" a specific interest group.

Instead, council members should be industry members with broad based support, broad experience and involvement and a long history in the industry -- not single gear fishermen, advocates for one group or representatives of one group.

A man who is involved in processing and several different gear types and fisheries is concerned about the entire industry. He may even fish off several different states. If we appoint this individual to the council, then questions of "fair apportionment" become irrelevant. It is important that geographical areas be a low priority.

It is very sad that politics have become involved and in many cases council nominations are made as "a favor for favors."

3. The North Pacific's evolving fisheries

The national interest is not served by encouraging fisheries development which results in over capitalization. Nor is the national interest served by artificially supporting unprofitable operations.

I don't think NOAA has paid attention to avoiding these two extremes in the past, nor is the MFCMA really clear in its policy direction.

Federal loan policies and management policies have a great deal to do with the direction our fisheries evolve. When the reflagging act was passed, it set off the rapid expansion of the factory trawler fleet, which in turn disrupted the expected development of shorebased processing and denied markets to displaced joint venture vessels.

We should have been addressing the issue of at-sea processing and orderly transition for the existing fleet rather than simply to reflag or not to reflag.

The shoreside fisheries are not quite fully utilized, but are being impacted strongly by factory trawler pulse fishing, mainly in order to get their 20% retainable black cod bycatch.

If preference were given to shoreside processors, there would be more than enough employment for the existing harvesting fleet, including the ex-JV vessels.

The foreign processors in essence paid for the development of a well equipped and experienced U.S. groundfish fleet which the U.S. should now be taking advantage of.

As I understand the MFCMA, the national interest is in creating as much employment as possible in the fishing industry and encouraging long term investment and development. Processing plants should work year round and offer stable employment for their workers and harvesting vessels.

NOAA needs to interact positively with the councils to assure that the councils act responsibly and carry out the primary duties of the Magnuson Act which is conservation of the resource.

NOAA also should take the responsibility to reject nominees for council seats who do not meet the criteria set forth in the Magnuson Act.

NOAA should be aggressively involved in marketing, both domestically and export and in the development of new product forms. For example, look at the employment generated in the whole Northwest by the Alaska Fisheries Development Foundation's surimi project which not only allowed the development of shorebased surimi production, but spurred the creation of companies in other states to make products from the surimi.

NOAA should also be heavily involved in assuring that the directions the fisheries evolve are manageable, that removals from the resource can be accounted for and that the fishing methods support conservation of the resource, rather than waste, as much as possible.

I believe we should be looking after this resource and caring for it so that it is truly a renewable resource rather than abusing it for short term profits. NOAA should play an important role in this goal.

David P. Harville
Kodiak and Western Trawler Group

Senator **Breaux**. Thank you very much.

Next, our final witness, Mr. Ed Evans. Glad to have you.

STATEMENT OF EDWARD D. EVANS, EXECUTIVE DIRECTOR, ALASKA FACTORY TRAWLER ASSOCIATION

Mr. **Evans**. Thank you, Mr. Chairman.

My name is Ted Evans. I am proud to represent the Alaska Factory Trawler Association, which is a group which took the challenges of the Magnuson Act and the amendments, the processor preference amendment, the American Fishery Promotion Act, and the Anti-Reflagging Act, to heart and developed or contributed to developing the bottomfish fisheries of the North Pacific.

I would like to get directly to the issues that we are facing before us today. It is true that the rapid Americanization of the North Pacific fisheries, while rewarding, has presented us with fishery management problems, certainly problems with information-gathering, in allocations, and the resultant new fisheries that are occurring in the donut hole beyond the regulation of any nation.

With respect to observers, our association supports a mandatory observer program for our vessels and every vessel in the North Pacific fisheries.

With respect to bycatch, this is an issue that we have been participating in and contributing our knowledge to resolve. It is pervasive in all fisheries and it is a problem which is solvable.

In fact, we essentially had an agreement within our bottomfish fishery with all groups but one, and I think it is something that we can resolve and we are continuing to work on it.

With respect to shore processor preference, this is an issue that was raised during the North Pacific council's consideration of limited entry by some shore processors. It was raised again with this incident where the Gulf of Alaska pollack quota was reached early, causing concern by those who were closed down, including ourselves.

Frankly, we are very, very concerned that this new super-preference is being raised as an issue, having done what we have done to Americanize these fisheries pursuant to the charges of the Magnuson Act.

Obviously, the creation of a super-preference for shore processors would bring our industry, which has been capitalized to the tune of $800 million, to its knees, and I think that would be a very significant reversal for the great economic development that we have seen in our North Pacific fisheries to date under this Act, the Magnuson Act, and the contract that the industry had with the government to develop these fisheries.

Floating processors are premised on mobility, on state of the art freezing technology, and on the ability to take the factory to the fishing grounds, and that is what has enabled us to compete with the foreign fisheries establishment that was there when we had no bottomfish fisheries ten years ago.

One other point. We see this at least partially as an effort of these foreign processors which have been displaced pursuant to the mandates of the Magnuson Act to come in through the shoreside processor preference, because floaters do have limitations on foreign ownership, on foreign employment, and on foreign place of build, whereas the shore processors have none of these.

I would also like to make a comment with respect to the structure of the councils. The council composition and the process of selecting council members has been bothersome to us.

Our industry, which is based outside of Alaska, is seeking two industry seats, one from Washington and one from Oregon. The distant water trawl fishery, both the JV's and the domestic processing industry, the factory trawler industry, does not presently have a representative on the North Pacific council.

This seems unreasonable in view of the amount of investment and the importance with which we view the council decisions that are made. And we are looking for a greater opportunity to participate in the council process.

With these important issues that are coming up with respect to the refining of the management of the North Pacific groundfish fisheries, we believe that the participation of additional members from this distant water fleet can aid the council in coming to suitable decisions and hopefully avoid having them brought back to Washington when they are made by the council.

I think I will end my testimony at this point, Mr. Chairman. I know that there will be questions and I can elaborate on these.

[The statement and questions and answers follow:]

STATEMENT OF EDWARD D. EVANS, ALASKA FACTORY TRAWLER ASSOCIATION

Thank you, Mr. Chairman. My name is Ted Evans and I am the Executive Director of the Alaska Factory Trawler Association (AFTA). AFTA is comprised of twenty two regular member companies operating approximately forty-five catcher/processor vessels and floating processors in the North Pacific groundfish fishery. In 1989, the existing factory trawler and at sea processing fleet, and the new vessels scheduled to enter the fishery during the fishing season, will harvest and process at sea most of the 2.3 million metric ton groundfish quota off Alaska. The fleet, which was non-existent in 1976, represents an investment of $800 million and will employ in excess of 3,000 American crew members.

Development of the U.S. Factory Trawler Fleet.

Without the Magnuson Act, it is unlikely that there would be a fleet of U.S. catcher/processor boats and processing motherships in the North Pacific waters capable of fully utilizing the 5.0 billion pound quota of pollock, Pacific cod, yellowfin sole and other groundfish species. The first significant amendments to the Act, which were passed in 1978, encouraged the U.S fishing industry to develop underutilized fisheries, "including bottom fish off Alaska." This specific language was added as a finding under Section 2 of the Act, providing quite specific guidance to the U.S. fishing industry with respect to the intentions of Congress for a long term national fisheries policy.

The 1978 amendments to the Magnuson Act established a domestic processor preference provision. With the rise in joint venture activities (U.S. fishermen selling their catch to foreign processing vessels), Congress acted to designate priority for U.S. caught and processed fish. Congress, in establishing a preferential right for U.S. processors to fish caught in the "fishery conservation zone", noted that such action was supported by, among other factors, a need to address the nation's $2.1 billion trade deficit for fishery products in 1977.

These are the rules established in 1978. In the past eleven years, the U.S. fishing industry responded to the policies articulated in the Magnuson Act. U.S. fishing companies invested over $800 million during the 1980's to build a modern factory trawler and at sea processing fleet necessary to achieve "Americanization" of the bottom fish resource. To characterize the industry, these state of the art catcher/processors and motherships produce fish in various forms, including surimi, fillets, and headed and gutted products. The groundfish fishery is a low value, high volume fishery; the nature of the fishery and the substantial capital investment requires virtual year round operation.

The crafters of the Magnuson Act and the 1978 amendments, several of whom currently serve on the Commerce Committee, envisioned the development of an industry which was capable of delivering high quality product at a competitive price on the international marketplace. The U.S. fishing industry has attained this position. Our success is evidenced by the development of a

North Pacific groundfish fishery largely responsible for a record $2.2 billion in U.S. exports of edible fishery products in 1988, a $500 million increase over 1987 levels.

Amendments to the Magnuson Act.

AFTA is seeking one change in the Magnuson Act. The factory trawler and at sea processing fleet does not have a representative on the North Pacific Fishery Management Council. The fleet harvests nearly 85 percent of the 5.0 billion pound groundfish catch in the Bering Sea and Gulf of Alaska. It is inconceivable that the primary participant in a fishery that represents over half of all U.S. seafood landings is denied representation on a regulatory body structured specifically to include user groups in the decision making process.

Current law, Section 302(a)(8) of the Magnuson Act, provides for the Secretary of Commerce to appoint 5 Alaskan and 2 Washington voting members to the North Pacific Council from lists of nominees submitted by the respective States' Governors. Significant fishing interests in Washington and Oregon are presently unrepresented in the process.

AFTA proposes adding two seats to the North Pacific Council: one for the State of Washington and one for Oregon. This change permits fuller participation by industry groups in the management process, recognizes the relative importance of the harvesting and processing capacity in all of the States within the Council's jurisdiction, and is consistent with the original goals of the Magnuson Act.

Improving Administration of the Act.

There are several comments AFTA wishes to make regarding administration of the Act by the Department of Commerce.

1. Council Representation.

While AFTA believes two additional seats on the North Pacific Council should be added, we also believe that the Secretary of Commerce has ignored existing requirements of law in appointing nominees to the Council. The Committee has heard from fishing industry members from around the country concerned that appointees do not meet the minimum qualifications of law. The Magnuson Act requires appointees to be "knowledgeable and experienced with regard to the conservation and management...or commercial harvest, of the fishery resources of the geographical area concerned." Appointment of unqualified individuals, which further dilutes industry representation on the panels, is happening with increasing frequency around the country.

Other efforts by Congress to tighten the appointment process have gone unheeded as well by the Commerce Secretary. For example, Section 302(b)(2)(A) which was added to the Magnuson Act in 1986 requires appointees to the regional fishery management councils to reflect a fair apportionment "of the active participants...involved in the fisheries under Council jurisdiction."

As stated above, the factory trawler and at sea processing fleet, which represents an $800 million investment in the future of U.S. fisheries, does not have one representative on the North Pacific Fishery Management Council. No other industry is regulated by its competitors.

2. Federal Oversight of the Council Process.

The Magnuson Act contemplates a strong oversight role by NOAA Fisheries and the Department of Commerce to ensure that Council actions are consistent with the National Standards and other goals and objectives of the Magnuson Act. The problem of inadequate representation on the Council is compounded to whatever extent the Department fails to exercise vigorous oversight responsibility. NOAA Fisheries has gone too far in deferring to Council actions, regardless of the fairness or equity of the actions involved. It is essential that NOAA Fisheries recognize its oversight responsibilities and reassert itself in the management process to ensure that the goals and objectives of the Act are being met.

3. Funding for the Magnuson Act.

Adequate funding for fisheries programs is critical for proper administration of the Act. Over the years, this Committee has recognized that and worked hard to provide the necessary funds. We are grateful and hope you will continue to support us. Today, I'll mention two areas where funding needs to be targeted to meet the goals of the Magnuson Act.

Last year, a landmark agreement between fishing and environmental groups provided for the placing of natural resource observers on fishing vessels to record interactions with marine mammals. The observers, while carrying out federal responsibilities for marine mammal management, would also collect data for fisheries managers. However, funding for the program for FY 1990 is not at all assured. The administration has not requested the funding. Approximately $7.5 million annually is needed to administer the program.

Funding for fisheries enforcement is also needed. Last year, foreign vessels - fishing in the "donut hole", an area of international water in the Bering Sea between the U.S. and Soviet 200-mile zones, caught over 1.0 million metric tons of pollock. We know from aerial reconnaissance and recent vessel seizures that foreign vessels operating in the "donut hole" are illegally entering U.S. waters to fish. In fact, a Soviet trawler was apprehended just last week fishing within U.S. waters in the Bering Sea.

While U.S. officials work to design a management structure to control harvests of fish in the "donut" area, we need to expand enforcement capabilities to ensure illegal fishing by foreign vessels in our waters is stopped. Just as industry members testified about the harmful effects of foreign driftnet fisheries on U.S. origin salmon, those raiding U.S. groundfish stocks endanger domestic groundfish conservation and management efforts. Illegal fishing on pollock by foreigners (with whom we compete with for sales on the international market) costs U.S. jobs, export opportunities, and creates more conflict among domestic users fighting for access to limited fishery resources.

Other Issues Involving Reauthorization of the Act.

The other issues relating to reauthorization of the Magnuson Act upon which AFTA wishes to comment are: shoreside processor preference, bycatch, observer coverage, and extension of the territorial sea.

1. Shoreside Processor Preference.

Some interests are expected to press for amending the Act to create a quota system giving shoreside processors preferred access to groundfish resources. AFTA strongly opposes granting privileged access to a common property resource to any sector of the fishing industry.

The shoreside processor preference proposal runs headlong into Section 301 of the Magnuson Act, which specifies the seven National Standards against which all management actions are measured. The Act provides among its safeguards that management measures shall not discriminate between residents of different States, allow any entity to acquire an excessive share of fishing privileges, and shall not have economic allocation as its sole purpose.

Furthermore, Section 303(b)(6) sets out Congress' requirements when any sort of limited access system is proposed for a fishery. Congress determined that before limiting access to a fishery, the following factors be considered: present participation in the fishery, the capability of vessels in the fishery to engage in other fisheries, and the economics of the fishery involved.

AFTA hopes Congress will hold itself to these same standards that it wisely imposes on the regulatory process, and rejects suggestions for creating a shoreside processor preference.

Unlike the domestic processor preference provision of the Act, which conferred priority status on U.S. processors over foreign processors, the current proposal disadvantages one sector of the U.S. fishing industry over another. In fact, it is the sector of the U.S. industry that made the investment, took the risk, and successfully displaced foreign fleets from U.S. waters, that is the target of the proposed change.

Ironically, the beneficiaries of the proposal will be the major Japanese fishing companies which dominate our export markets in Japan and which formerly dominated the groundfish fishery off Alaska. These companies, which the U.S. factory trawler and at sea processing fleet phased out of the harvesting sector, are now investing in onshore processing operations. Onshore plants have no foreign ownership restrictions and, except for immigration laws, are not required to hire U.S. citizens to work in the plants. Factory trawlers and at sea processing ships are subject to specific requirements imposed by the Anti-Reflagging Act.

In addition to the immigration laws, that Act requires factory trawlers and at sea processors to be manned by crews comprised by at least 75 percent U.S. citizens. It further requires all fishing and new processing vessels to be built in the U.S. The Anti-Reflagging Act also imposes U.S. citizenship ownership requirements on vessels, which do not apply to shoreside facilities. In essence, creating a preference for shoreside plants would "de-Americanize" U.S. fisheries.

In view of where we started when the Magnuson Act was adopted, and the clear signal which that Act gave to the U.S. industry to go out and Americanize the groundfish fishery, any sort of shoreside preference would be a breach of the contract entered into by the federal government and industry in 1976. The role of the at sea processor has been clear since the first vessel began competing with foreign flag vessels. It is prohibited for these U.S.-flag catcher/processors in the groundfish fishery to retain certain "higher valued" species, such as, salmon, halibut and crab. That limitation is offset to some degree by our mobility to move from area to area to find enough bottom fish to keep the onboard factories running.

Shoreside processing plants, on the other hand, have the flexibility to process a variety of species, including the higher valued species which have been traditionally processed onshore. Some onshore processors now want to supplement their current operations by adding surimi and filleting lines to process groundfish. That is certainly their prerogative, but if they do get into groundfish they should be prepared to compete on a quality and cost basis with frozen at sea products, and should not receive a guaranteed share of the fishery allocations.

U.S. vessels manned by U.S. crews operating in federal waters should not be treated as second class citizens; therefore, we urge the Commerce Committee to reject any proposal to create a shoreside processor preference.

2. Bycatch.

The trawl industry in general and AFTA in particular is concerned about the impact which its bycatch of crab and halibut has on the resources involved and on the fishermen (including trawl fishermen) whose livelihoods are dependent on the wise use of those resources. We have and will continue to devote our efforts to minimize our bycatch of those species to the maximum extent possible and to work with other elements of the industry to develop a rational and reasonable approach to the management of bycatch.

At the same time, it should be noted that bycatch is an extremely complex and pervasive problem in many other fisheries. It is, therefore, not only unfair but overly simplistic and erroneous to view bycatch as a trawl problem only. For example, longliners catch crab and halibut in their codfish operations. Crabbers catch halibut along with crab in their pots; in some seasons, they catch up to eight times as many immature and female crabs as they do legal-sized males. The fact of the matter is that some level of bycatch is simply unavoidable in prosecuting each of these fisheries.

Fishery managers must weigh the costs of bycatch against the benefit or value of the target catch. They must then decide how much of a given resource should be allocated to the directed fishery for that resource and how much should be allocated as bycatch to other fisheries. These are difficult and often contentious decisions, but they must be made. The ultimate solution to the bycatch issue is better left to the meeting rooms and other forums provided through the Council/NOAA Fisheries process, where fishery managers, scientists, and industry representatives who are familiar with the complexities of the bycatch issue can sit down and hammer out mutually acceptable solutions; and where NOAA Fisheries can review those solutions to ensure compliance with the standards of the Magnuson Act. This will require good faith efforts by all concerned and AFTA pledges its continued support for that process.

3. Observers.

AFTA recognizes that the fishery management process needs a comprehensive data base upon which to base its management decisions. In the past, foreign vessels provided convenient and relatively cost-free platforms for U.S. observers to collect scientific data and information. Now that foreign fishing is gone and joint ventures are rapidly declining, it is essential that a comprehensive data collection program be established to ensure the integrity of the data base needed to manage the fishery. An essential ingredient of that program will be observers on board U.S. fishing vessels.

In our view, these are the necessary elements for a domestic observer program. First, it must be fairly and equitably designed and implemented. It must not be punitive in nature or designed to burden one particular element of the industry. Second, it must be mandatory. Any vessel capable of accomodating an observer must be required to take one if requested by the appropriate authority. Third, it must be comprehensive and designed to collect data from all components of the fleet: longline, pot and trawl--just as in the foreign fisheries observer program.

Fourth, it must be well coordinated and centrally managed so that well qualified observers are hired and trained and so that the data generated is reliable and collected in a cost effective manner. NOAA Fisheries' foreign observer offices have done an exemplary job and already have the systems, personnel and infrastructure in place to manage a domestic program. They are the logical choice. Fifth, the level of coverage must be sufficient to generate statistically reliable data. Exactly what that level of coverage is may vary by fleet, season or fishery. The responsibility for determining the level of coverage, observer deployment strategies and other operational aspects of the program should be left to the scientists and managers responsible for administering the program.

Sixth, in view of the cost of placing observers on board fishing vessels (costs can run as high as $7,500 a month per observer), and in view of the fact that the entire industry will benefit from the data collected, some sort of broad based funding mechanism must be found. In AFTA's view this should be a federal responsibility and should be given a high priority. Adequate funding should be made available for FY 1990. One source of federal funds is the Saltonstall-Kennedy program which annually collects through tariffs on fishery imports, far more than enough to fund an observer program.

As a stop gap to help cover the void left over from the demise of the foreign observer program and pending the implementation of a domestic program, AFTA created an industry funded voluntary program for 1989. As an incentive to other industry groups to participate, AFTA contributed $100,000 as seed money to fund the program and pledged to match other contributions on a dollar for dollar basis up to $500,000. Observers funded through this program are currently serving onboard AFTA vessels, but the funds are being rapidly depleted. A permanent fix must be found as soon as possible.

4. Extension of the Territorial Sea.

In December, 1988, President Reagan announced the extension of the U.S. territorial sea to twelve nautical miles. Some have argued for extending state jurisdiction out to twelve miles as well. AFTA opposes increasing state jurisdiction.

Since implementation of the Magnuson Act, U.S. fishermen have operated within a fisheries management structure that includes federal representatives and state officials from the region in the decision making process. The system operates to manage fish as a unit throughout their range and to create management measures for federal waters that do not discriminate between residents of different states.

In short, the Magnuson Act represents a series of compromises which attempt to balance the interests of fishermen of the nation, many of whom fish in waters that may be somewhat distant from their State. Nothing contained in the Presidential Proclamation changes the current balance. We urge the Committee to maintain the status quo.

Mr. Chairman, that concludes my testimony. I'll be pleased to answer any questions that you might have.

Responses of Edward Evans to Questions of Senator Packwood

Question #1: You asked whether there should be a separation between the decision determining allowable biological catch and the allocation decision. If a separation is suggested, who should decide the allocation question and what criteria should be used to determine allocations among users?

The so-called NOAA Blue Ribbon Panel report issued in June, 1986 recommended that NOAA Fisheries determine the allowable biological catch in a fishery and that the appropriate regional fishery management council allocate the available fish among the interested user groups. The recommendation was suggested as a means to avoid setting harvest levels that accomodate the demands of the users at the expense of sound conservation.

The issue of separating conservation and allocation issues is probably of greater significance in other U.S. fisheries where fish stocks have declined, or at least not improved, since implementation of the Magnuson Act. The North Pacific groundfish fishery, however, has been conservatively managed. There is concern that not enough scientific data is available, thus the North Pacific Council has acted cautiously in establishing harvest levels.

Allocation decisions have become more acrimonious in recent years as growth of the U.S. fishing industry has led increasingly to competition among fishermen for limited resources, fishing gear conflicts, and other allocation disputes. The Magnuson Act reauthorization is well timed for evaluating whether the council system is the best process to fairly treat allocation matters.

AFTA is not proposing to change the existing system which charges the councils to set allocations in addition to performing management and conservation functions. However, we do suggest three policy changes that are essential if councils are going to set responsible allocation policies.

First, the Secretary of Commerce must adhere to the Magnuson Act requirements providing for qualified nominees and appointees who comprise a fair apportionment of participants in the fisheries under council jurisdiction. If the role of councils is evolving into an entity principally recommending allocations, then it is even more crucial than before to ensure representation for all users on the councils.

Second, the Secretary of Commerce, who is ultimately responsible for promulgating fishery regulations, must reassert adequate oversight with respect to council actions. Since fishing industry members are being regulated by their competitors, it is essential that the Secretary carefully review the fairness of council actions.

Finally, regional councils should be dissuaded from aggressively pursuing a role as economic and social planners. Too often, food production is not seen as an equally high priority as fishery resource management. Efficiency in fishing means lower costs for domestic consumers and a better competitive position on the world market for U.S. fishery exports. If regional fishery management councils are to continue to develop allocation regulations, a broader national interest in the use of fishery resources must be met.

The National Standards of the Magnuson Act provide adequate guidance to the councils in determining appropriate conservation and management measures. To a lesser degree, these seven standards offer criteria for allocation decisions. Perhaps, Congress did not anticipate or intend for councils to be so involved in allocation questions. However, if the councils are to continue the present trend, then the criteria specified in the limited entry provisions of the Magnuson Act might best be employed as guidelines for other allocation formulas.

Question #2: You asked how I interpret Congress' intent that active participants in the fishery be ensured a "fair apportionment" of seats on the councils and whether the Secretary of Commerce should take a snapshot of the fishery to determine the relative proportion of users.

Three years ago, Congress, concerned about the make-up of councils, sought to tighten the qualifications for appointment and ensure that a council system designed to include industry participation provided adequate user representation. Unfortunately, the Secretary of Commerce has not abided by the change in the law.

Commerce's failure to respond hurts segments of the fishing industry, including AFTA's members who harvest approximately 80 percent of the nation's largest fishery resource but do not have any representation on the North Pacific Council. This at least describes what is not "fair apportionment", even if it fails to define what is "fair apportionment."

The statutory requirement for fair apportionment suggests a weighted system of representation based on the number of participants, harvesting or processing capacity, or another quantifiable measure. However, the relatively few number of council seats suggests that such a system might not be practicable. In lieu of an elaborate formula for apportioning seats, AFTA believes it is essential to get a commitment from the Secretary to consider the existing and, some additional, relevant factors in making appointments.

The Secretary should consider the various gear types engaged in the fisheries under each council's jurisdiction, the relative fishing power of each gear type, the geographical location of the users, the ongoing regulatory activity affecting specific fisheries, and processing interests in the region. There will almost certainly be difficult decisions to accomodate deserving users on councils with limited numbers of seats; however, the current appointment process suggests that insufficient effort is made to create balanced councils. The Secretary simply needs to excercise his authority in accord with statutory requirements. Sufficient Congressional guidance has been provided.

AFTA does suggest increasing the size of the North Pacific Council by two seats, one for Oregon and one for Washington. The existing allotment fails to take into account the substantial harvesting and processing capacity based in those two States, and participating in the North Pacific fisheries. It is impossible given the current number of seats to ensure representation, much less fair apportionment, on the Council for the various gear types and other user groups located in the Northwest.

A change in the law to expand the North Pacific Council and a change in policy by the Commerce Department are needed to achieve Congress' intent regarding fair apportionment.

Question #3: You ask if the Magnuson Act is adequate to guide decisions about the evolving North Pacific fisheries and what should NOAA's role be in guiding the evolution. You reference in particular the opportunities remaining for joint venture fishermen in light of Americanization of the groundfish fishery.

The Magnuson Act established Americanization of the groundfish fishery as a national goal. The goal was broadly stated intending for the fishing industry to develop the appropriate technology to accomplish the Americanization objective. The advent of a U.S. factory trawler and mothership fleet was the industry response to Congress' declaration.

Existing controversies among user groups in the fishery resulting from rapid evolution of the fishery are fairly typical management and allocation issues. AFTA does not believe action by Congress is necessary to address these issues.

NOAA, on the other hand, has a well defined and vital role to play in stabilizing the groundfish fishery. NOAA's first priority must be to ensure that the stock remains healthy; NOAA's scientific program will be the key to rational management of the resource. Also, NOAA will have to arbitrate bycatch disputes and otherwise involve itself aggressively in the active regulatory climate surrounding development of Alaska groundfish.

With regard to your expressed concern about joint venture fishermen, it is important when discussing the evolution of the groundfish fishery not to assume joint venture operators have been excluded from the opportunities stemming from Americanization of the fishery. Joint venture fishermen knew fishing for foreign processors were transitional operations. Some switched to factory trawler operations; others made arrangements to fish for floating and shoreside processors.

Others, perhaps, had less foresight or business acumen. A recent Commerce Department report on the impact of the 1987 Anti-Reflagging Act indicated 37 of the 128 joint venture trawlers entered the fishery in the past two years, when the vast majority of factory trawlers were coming on line. It should not be Congress' or NOAA's responsibility to protect all these business decisions. The case has not yet been made that all those engaged in joint venture operations need or are due relief. Congress established ten years ago that joint ventures were transitional and the lead time to build the factory trawler fleet should have provided adequate warning to late entrants in the joint venture fishery.

Senator Packwood, during the Magnuson Act hearing, you noted that fishermen are among the most avid capitalists you had come across. AFTA agrees. Congress should move deliberately, keeping in mind that the factory trawler fleet was built in accord with Congressionally mandated fisheries policy, before adopting any legislation affecting the evolution of the groundfish fishery.

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June 21, 1989

The Honorable Ted Stevens
United States Senate
Washington, DC 20510

Dear Senator Stevens:

As a follow-up to the Senate Commerce Committee hearing on reauthorization of the Magnuson Fishery Conservation and Management Act, you posed two questions to AFTA.

Attached is a list of AFTA members, the vessels operated by those members and the date the vessel entered the groundfish fishery. Included also is a list of factory trawler owners who are not members of AFTA. Finally, the list includes the names of vessels is expected to enter the fishery. AFTA hopes this adequately addresses your first question.

Your second question concerned the percentage of product processed by factory trawlers and floating processors that is exported. Natural Resource Consultants of Seattle estimates the following distribution of groundfish products:

Market for Groundfish Products
1989 Estimate

Product Form	Japan	U.S.	Other Countries
Surimi	70.0%	30.0%	0.0%
Fillets	0.0%	80.0%	20.0%
Headed & Gutted	100.0%	0.0%	0.0%
Total By Weight	58.0%	37.0%	0.5%

The Honorable Ted Stevens
June 21, 1989
Page Two

If you have any questions about the enclosed information, please do not hesitate to contact AFTA. Thank you for your interest. We look forward to working with during the reauthorization process for the Magnuson Act.

Sincerely,

Jim Gilmore

Jim Gilmore
Washington Representative

ALASKA FACTORY TRAWLER ASSOCIATION
MEMBERSHIP LIST

COMPANY	VESSELS OWNED	DATE OF ENTRY INTO FISHERY	
AKC	ALASKAN HERO	1987	NOT AFTA MEMBER
ALASKA TRAWL FISHERIES	ENDURANCE	1988	
ALEUTAIN SPRAY FISHERIES	STARBOUND	1989	NOT AFTA MEMBER
AMERICAN SEAFOODS COMPANY	AMERICAN EMPRESS	1988	
	AMERICAN DYNASTY	1989	
ARCTIC ALASKA FISHERIES CORP.	ALEUTIAN ENTERPRISE	1984	
	AMERICAN ENTERPRISE	1987	
	BERING ENTERPRISE	1985	
	BRISTOL ENTERPRISE	1988	
	HARVESTER ENTERPRISE	1988	
	NORTHWEST ETERPRISE	1982	
	OCEAN ENTERPRISE	1985	
	PACIFIC ENTERPRISE	1985	
	SEATTLE ENTERPRISE	1988	
	U.S. ENTERPRISE	1988	
	UNIMAK ENTERPRISE	1988	
ARCTIC KING FISHERIES	ARCTIC TRAWLER	1980	
	RESOLUTE	1989	
ARCTIC STORM, INC.	ARCTIC STORM	1988	
ARICA FISHING COMPANY	ARICA		
BERING FISH	BERING 1	1988	NOT AFTA MEMBERS
COMMAND PROCESSORS	ALASKAN COMMAND	1988	
CRYSTAL PRODUCTS INC	OCEAN CYCLONE	1990	NOT AFTA MEMBERS
CRYSTAL STAR, INC.	CRYSTAL VIKING	1988	
	CRYSTAL CLIPPER	1989	
DEEP SEA FISHERIES	PACIFIC TRAWLER	1988	
	HIGHLAND LIGHT	1989	
	TO BE NAMED	1990	
EMERALD RESOURCES	CLAYMORE SEA	1988	
	HEATHER SEA	1989	
	ALEXANDRIA	1990	

FISHING CO OF ALASKA	ALASKA 1	1986
	ALASKA VOYAGER	1987
	ALASKA RANGER	1989
GLACIER FISH CO., LTD	NORTHERN GLACIER	1983
	PACIFIC GLACIER	1988
GOLDEN AGE FISHERIES	REBECCA IRENE	1987
	BROWNS POINT	1988
	MICHELLE IRENE	1988
	ROYAL PRINCE	1988
GOLDEN ALASKA SEAFOODS	GOLDEN ALASKA	1983
JAN GRIMSON	CONTUNUITY	7 NOT AFTA MEMBERS
JUBILEE FISHERIES	VAERDAL	1988
KEMP PACIFIC FISHERIES	BERING TRADER	1988
	DEFENDER	1990
	VOLUNTEER	1990
MARINE MANAGEMENT	ROYAL SEA	1987
	SNOW KING	1987
	ROYAL KING	1988
MORNING STAR FISHERIES	ALEUTIAN SPEEDWELL	1988
NEW WAVE FISHERIES	TREMONT	1987 NOT AFTA MEMBERS
NORTH PACIFIC FISHING	AMERICA #1	1982
NORTHERN AURORA	NORTHERN AURORA	1987 NOT AFTA MEMBERS
OCEANTRAWL, INC.	NORTHERN EAGLE	1988
	NORTHERN HAWK	1990
PACIFIC BOUNTY, INC.	PREDATOR	1988
PROFISH INTERNATIONAL	ROYAL PRINCESS	1988
	PHOENIX	1989
SEABOARD MANAGEMENT		
SPEEDWELL	SPEEDWELL	1988 NOT AFTA MEMBERS
TASKER/PHILLIPS BOAT	UNKNOWN NAME	1989

LIST OF FACTORY TRAWLER AND MOTHERSHIP PROCESSING VESSELS OPERATING IN THE POLLOCK FISHERY OFF ALASKA

Submitted by Senator Ted Stevens based on information from NMFS and the Alaska Factory Trawler Association.

COMPANY	VESSELS OWNED	DATE OF ENTRY INTO FISHERY
AKC	ALASKAN HERO	1987
ALASKA TRAWL FISHERIES	ENDURANCE	1988
ALEUTAIN SPRAY FISHERIES	STARBOUND	1989
ALYESKA	ALASKA OCEAN	1990
AMERICAN SEAFOODS COMPANY	AMERICAN EMPRESS	1988
	AMERICAN DYNASTY	1989
ARCTIC ALASKA FISHERIES CORP.	ALEUTIAN ENTERPRISE	1984
	AMERICAN ENTERPRISE	1987
	BERING ENTERPRISE	1985
	BRISTOL ENTERPRISE	1988
	HARVESTER ENTERPRISE	1988
	NORTHWEST ENTERPRISE	1982
	ISLAND ENTERPRISE	1990
	OCEAN ENTERPRISE	1985
	KODIAK ENTERPRISE	1989
	PACIFIC ENTERPRISE	1985
	SEATTLE ENTERPRISE	1988
	U.S. ENTERPRISE	1988
	UNIMAK ENTERPRISE	1988
	ARCTIC ENTERPRISE (M)	
ARCTIC KING FISHERIES	ARCTIC TRAWLER	1980
	RESOLUTE	1989
ARCTIC STORM, INC.	ARCTIC STORM	1988
ARICA FISHING COMPANY	ARICA	1989
BERING FISH	BERING 1	1988
BIRTING	OCEAN ROVER	1990
COMMAND PROCESSORS	ALASKAN COMMAND	1988
CRYSTAL PRODUCTS INC.	OCEAN CYCLONE	1990
CRYSTAL STAR, INC.	CRYSTAL VIKING	1988
	CRYSTAL CLIPPER	1989
DEEP SEA FISHERIES	PACIFIC TRAWLER	1988
	HIGHLAND LIGHT	1989
	TO BE NAMED	1990
	PACIFIC TRAWLER	1988
EMERALD RESOURCES	CLAYMORE SEA	1988
	HEATHER SEA	1989
	ALEXANDRIA	1990

FISHING CO OF ALASKA	ALASKA 1	1986
	ALASKA VOYAGER	1987
	ALASKA RANGER	1989
FLETCHER	FLETCHER	1990
GLACIER FISH CO., LTD	NORTHERN GLACIER	1983
	PACIFIC GLACIER	1988
GOLDEN AGE FISHERIES	REBECCA IRENE	1987
	BROWNS POINT	1988
	MICHELLE IRENE	1988
	ROYAL PRINCE	1988
GOLDEN ALASKA SEAFOODS	GOLDEN ALASKA (M)	1983
JAN GRIMSON	CONTUNUITY	?
JUBILEE FISHERIES	VAERDAL	1988
KEMP PACIFIC FISHERIES	BERING TRADER (M)	1988
	DEFENDER	1990
	VOLUNTEER	1990
KUTTLE	NORTHERN VICTOR (M)	
MARINE MANAGEMENT	ROYAL SEA	1987
	SNOW KING	1987
	ROYAL KING	1988
MORNING STAR FISHERIES	ALEUTIAN SPEEDWELL	1988
NEW WAVE FISHERIES	TREMONT	1987
NORTH PACIFIC FISHING	AMERICA #1	1982
NORTHERN AURORA	NORTHERN AURORA	1987
OCEANTRAWL, INC.	NORTHERN JAEGER	1990
	NORTHERN EAGLE	1988
	NORTHERN HAWK	1990
	NORTHERN FALCON (M)	1990
PACIFIC BOUNTY, INC.	PREDATOR	1988
PHOENIX LTD	OCEAN PHOENIX (M)	1989
PROFISH INTERNATIONAL	ROYAL PRINCESS	1988
	PHOENIX	1989
	VALIANT	1988
SEABOARD MANAGEMENT		
SPEEDWELL	SPEEDWELL	1988
TASKER/PHILLIPS BOAT	ACONA	1989
TASKER	POLAR STAR	1990

Senator **Breaux**. Well, thank you, Mr. Evans. I thank all the members of the panel.

I just have one question. Then I will recognize Senator Stevens. I remember the battle of 1978 very well, when we got into the question of domestic processor preference, and we put it into the Act.

We did that because the coastal ocean out to 200 miles was our zone. It was our economic zone containing U.S. resources. So Congress said our processors should have a preference over foreigners. But this seems to me a different question. If you have domestic processors who are involved in processing at sea and others involved in processing on shore, how is it that Congress should be involved in giving a preference to either of those two groups?

Shouldn't the economics, the ability to process efficiently, and the best quality determine whether processing should be at sea or whether processing should be on shore? My question is, why should Congress be involved in providing a preference among our own domestic processors to one group as opposed to the other?

Mr. **Evans**. May I respond?

Senator **Breaux**. Yes.

Mr. **Evans**. Mr. Breaux, that is exactly my point. I do not think there should be any preference, and I think it would be a significant policy reversal by this government were such a preference to be created.

Throughout this arduous period of Americanizing the fisheries ashore and afloat, the cry has been for a level playing field. To come in at this point in time and divide the DAP preference into a preference one and preference two would simply put the second preference category in a position where they could not continue with that with the industry. We would be noncompetitive.

Senator **Breaux**. Mr. Harville, you have some comments?

Mr. **Harville**. Senator Breaux, yes, I do.

You talk about a level playing field. It is not very level when a fleet which is overcapitalized at a rate exceeding anything we have ever seen before can come into an area, take all the fish, shut down a whole community, a whole area, a whole infrastructure down, leave and go someplace else.

I think that in the Magnuson Act that the shore-based communities in Alaska were mentioned. I think the fishermen were mentioned.

We were told at the time we were being displaced as JV fishermen that we were being displaced in the name of Americanization. I believed that. I took my fleet to town. I established a new business, providing for shore-based plants.

Now all of a sudden the same fleet that took me out of the JV business is putting me out of the shore-based business, and in doing that they are putting a whole bunch of Alaskan people out of business.

We cannot move our communities. Our communities in the North Pacific are based on fisheries. There is no way we can tie a rope to them or put a propeller on the island of Kodiak or move the town of Akutan or Dutch Harbor. They are there, they are there to stay.

I also remember distinctly during testimony when the factory trawler fleet was coming on line that they were going to be built to do the distant water fisheries, that they were fisheries that were so far away that they needed to be capitalized and fished. And that was the intent as we all understood it, that they were going to go out where the shore-based plants could reach.

What none of us realized was that there was going to be investment from all over the place, very little of it, if I might add—well, I will not say—a significant portion of it, I might add, from outside of any industry that ever had anything to do with fishing.

They have overcapitalized to the point now where, according to NMFS figures of 4:00 p.m., May 17th, 1989, there are 67 registered catcher-processors in Alaska. Now, I have been told and listened to testimony that the average catcher-processor might be able to take up to 60,000 metric tons a year.

Now, in fact there are vessels that say they can take 400,000 tons a year, there are vessels that say they can do fine on 10,000. But if you take the 60 and drop it back to 50 and you look at the boats that we ignore in the pipeline, not counting the ones we do not know about, you are looking at least 100 factory trawlers in a very short period of time.

Even at 50,000 metric tons apiece, that is 5 million metric tons. We only have 2.3 million metric tons to work with. So already—let them do what they want. They came in and they are the people that have overcapitalized. They are the people that say they need twice the fish that are available.

We did not say that. In Kodiak, our wildest extrapolations, we need 200,000 tons a year, in our wildest extrapolations. In Dutch Harbor I think they are going to need around 700,000 tons. That is well within the old YCAP.

These guys are coming in and saying they need two and three times what is available.

Senator BREAUX. Senator Stevens.

Senator STEVENS. Yes.

Mr. Evans, let me see if I understand what you said. You want additional members on the regional council to represent your industry, and yet you want the regional council to be more subservient to the National Marine Fisheries Service. Why do you want people on the council if you want all the power to come back to Washington?

Mr. EVANS. Senator Stevens, I have witnessed the operations of the council for many years now and, frankly, I think it is a very good process. I think the council system gets to the roots of the industry, and you get the input and the interchange that is necessary to come up with conscientious rulemaking.

We want to be players in that process. And I think it is fair to say that the people from my industry have felt that they have not been true players in the process, in that they have been underrepresented on the council.

Senator STEVENS. I only have so much time, so I would appreciate it if you just would answer my questions. You have made your statement.

How many vessels do you now represent?

Mr. EVANS. In our association we have roughly 40 vessels, Senator.

Senator STEVENS. And who financed them?

Mr. **Evans**. The financing is from all sources.

Senator **Stevens**. Where do you sell your product?

Mr. **Evans**. We sell our product in roughly——

Senator **Stevens**. 95 percent to Japan?

Mr. **Evans**. No, sir.

Senator **Stevens**. How much do you sell in the United States?

Mr. **Evans**. I would say we sell roughly 40 percent to 50 percent in the United States.

Senator **Stevens**. I mean not to exporters, but for consumption in the United States.

Mr. **Evans**. I do not have good figures for you, but I think it is roughly 40 percent, and that would be cod filets, pollack blocks, surimi, et cetera.

Senator **Stevens**. I would like to see you demonstrate to us that you are selling for consumption in the United States. It is my understanding your entities primarily are a replacement for the foreign vessels that we thought we were getting rid of with the 200 mile limit legislation.

You are now factory trawlers, just as they were. You have got a bycatch which in some instances exceeds the state allowance.

Senator **Packwood**. They have a what, Ted?

Senator **Stevens**. A bycatch, incidental catch of other species, that you do not process, that exceeds the allowance the State of Alaska makes for the fishery involved. And you do not have any observers.

You are providing us no detail in terms of your actual bycatch. You are providing us details on the bycatch that you process, but not what you are throwing back into the sea.

Now, I have got to tell you that I think that the great problem for the Congress now is to preserve Americanization in the sense of what we sought, which was conservation of the fisheries. And I am going to try to get Congress to try to find a way to limit you, just as we tried to limit the foreign fishermen, the foreign trawlers that were processing in our waters, to a single catch, and to make you shut down when you exceed the limits of bycatch by the council that you are operating under.

I really do not understand what you are doing, and I do not understand an industry that comes in and does what you did last year. In eleven days your members caught the total allowable catch of that species, which was supposed to last six months.

Now, that to me raised a flag for the United States that we have just substituted one monster for another. Those trawler ships have to live within the concept of the guidelines of the Magnuson Act, in my opinion.

I am sorry I have to leave, but I have to go to another committee meeting, as I mentioned, or I would have other questions.

But I have got to tell you, communities ashore aside, the problem really is the perpetuation of these species. We currently do not have the details of what you are doing. You are bringing in such monsters now into our waters, even larger than the foreign vessels that we excluded by virtue of the Magnuson Act.

And you have got a demand now for product that exceeds the total capacity of the fishery from Oregon, Washington, and Alaska before you got there. And we cannot survive that way, this fishery cannot survive. And somehow or other, unless we all wake up, including you, there is not going to be a fishery left.

The figures we have indicate the problem. You say in your statement that fishery managers must weigh the cost of bycatch against the benefit or value of the target catch when assigning allocation and allowable bycatch levels. I say the council has got to look at the optimum sustained yield on each—each—species and limit you, so that you do not invade a species that you are not assigned to target.

You are saying, on an economic basis we will process these fish when it is to our advantage; if not, we throw them over the side. And we say you ought to stop fishing when you hit the limits.

Now, somehow or other I think the answer is mandated observers, mandated limits on species, and effective, comprehensive protection of the species of the North Pacific, or else none of us is going to survive.

Now, we get secondly to Mr. Harville's problem, which is the most difficult one, and that was the one I raised in the beginning: How do we get some protection for an investment shoreside?

I do not know of any other business where a mobile facility can come into an area of established investment and take the product away. You cannot do it in the farming area, you cannot do it in the meat area, the beef and red meat areas.

In this area, you can literally come in and take it away, process it, and sell it wherever you want to sell it, to the detriment of processors in Seattle or in Alaska, to the distributing infrastructure up and down the West Coast. And I think this growth of these processors really has to be examined.

Now, you can make your statement as you like. I am sure others who will ask you questions will be more fair than I am.

I am overdue at another hearing now by 45 minutes. But I have got to tell you, I think this is the toughest problem we have. My answer is to strengthen the regional councils, not to weaken them. My answer is not to change the existing structure and balance that we got out of the Magnuson Act as far as membership on the councils.

It is to find some way that these councils have the power to limit these monsters so that they do not become even more voracious than the Japanese that we excluded by virtue of the Magnuson Act.

I am sorry, I have got to leave.

Thank you, Mr. Chairman.

Senator Breaux. Senator Packwood.

Senator Packwood. I wish Senator Stevens would stay. He never makes himself clear.

Mr. Peterson, let me ask you. The Magnuson Act says, to the extent practical, there is to be a fair apportionment of seats on the council. What in your judgment does that term mean?

Mr. Peterson. I am not sure I can answer that. The apportionment of seats on the North Pacific council is done on a geographic basis, except for the seats represented by the states, the state directors. There are five council members selected from the State of Alaska, two from the State of Washington.

To my knowledge, they are not designated to represent any particular segment of the industry.

Senator **Packwood**. Do you think we should change the law to have such a designation?

Mr. **Peterson**. This issue has not been discussed at our council level.

Senator **Packwood**. What is your personal judgment?

Mr. **Peterson**. It would seem to me that it probably would be desirable, if it is to reflect the significant participation in that industry by the State of Washington.

Senator **Packwood**. Well, I was not thinking of the State of Washington per se, or even my own State of Oregon. But two or three years ago we did not have major American factory trawlers. Now you do, and they are now a significant portion of the industry.

Should they be represented, or does this mean that you need to change the definition as the makeup of the industry changes? And forgetting the factory trawlers, the makeup of the industry was different two or three years ago than it was 20 years ago.

How do we make sure that the council is always reasonably in tune with the major participants in the industry?

Mr. **Peterson**. This is a difficult question because, what is the industry? And that is very hard to determine. You must take into consideration the different gear forms: longline, trawl, pot fishing.

You must take into consideration the size of the vessels. You must take into consideration the various fisheries, the species. You must take into consideration harvesters, processors, both shore-based and offshore. And that becomes very difficult.

I know, because when we try to establish working groups for the council we need to have balance, and that is an extremely difficult thing. In order to have balance, really, everyone has to be aboard. There have to be decisions in order to reduce the numbers.

Senator **Packwood**. Let me ask the other three members of the panel. Let me start with Mr. Harville and work across. What do you think?

Mr. **Harville**. I do not think the geographical balance is as important as the qualifications. I think that people being appointed to the council because they know a governor or they are a friend or because the governor is mad at somebody, I think that is terrible.

I think that there should be qualifications, that those people on the council know something about the industry. We do have cases in which people have never—I can remember one council member within this calendar year who came to Kodiak, and he is a new council member and that is as far as I will go with that, came to Kodiak. And we went to him and we said: Now, you are down here; would you like to go to our processing plant and see our fleet, since we know you have never been around a fishing boat before? He said: I do not have time.

Senator **Packwood**. Well, let me come back a little bit. You are going to get, no matter what kind of qualifications you write for a commissioner, you are going to get some qualified and some unqualified people.

I will say very frankly, if you were to say no one should be appointed except for those who have fished for 20 years or run a processing plant for 15 years, you will get a biased and skewed commission, who will see the world through fishing eyes.

And I am not sure but what you do not want a little broader representation than that. I want to know about the fair apportionment. From among the fishing industry, how should you decide who gets represented?

Mr. **Harville**. I think every gear group should be represented.

Senator **Packwood**. Every what?

Mr. **Harville**. Every gear group. I know that right now, with the new appointments to the council, two of the council members are from the longline industry. And what do we have? I think we have one member who represents the trawl industry, which is of course comprised of my industry and the factory trawlers, and is by far the largest segment of the industry.

Senator **Packwood**. And they have one person?

Mr. **Harville**. One person, and he is also a processor.

Senator **Packwood**. Mr. Thomson, what do you think?

Mr. **Thomson**. Our association has not really focused on the question of readjusting the balance on the councils. It is a tough question.

But I think in reference to adding a representative for the factory trawler group, maybe you are really talking about adding a representative for a newly developed group. So what about the crab industry? The crab industry, at this time, does not have a representative on the North Pacific council.

But maybe we would like to have a conservation representative. So then you would be balancing conservation and development.

Senator **Packwood**. I am not sure how you resolve this. The fishing industry is about as capitalist an industry as I know in terms of competition and having relatively small entrepreneurs and raising money. And if there is anything unique to capitalism, it is dynamic changes, whether it is the program industry or the auto industry.

If you have a static council and say, all right, here are the ten groups we will represent and we will freeze it in 1988, that will not be the ones you want in 1998.

So I am trying to figure out how to make it fair. Mr. Evans feels left out right now, and I think with some justification. How do we accommodate this?

Mr. **Thomson**. I just think it is a very difficult issue, Mr. Packwood. However, I think it needs to be addressed. I think you are asking a viable question that I would certainly recommend that the question be continued during regional hearings.

I think that we would all like to see some continuity in terms of balanced representation. But I do not have the answer in terms of how that should be done.

Senator **Packwood**. Mr. Evans.

Mr. **Evans**. Thank you, Senator.

Certainly I think the representation needs to be regional. These are regional councils, and certainly the North Pacific council is unique because the area that it regulates is off one state, but it certainly is a regional fishery and it historically has been that. I think that was what was intended when it was originally set up.

Our point is we now have a very significant new fishery and it is not getting represented well in the council, and it will be helpful to the process if that fishery does get represented.

Senator **Packwood**. Thank you, Mr. Chairman.

Senator **Breaux**. Thank you, Senator.

Let me ask Mr. Evans. Senator Stevens had articulated his concerns about the factory trawlers pretty clearly, and I was wondering if you had any comments with regard to some of his thoughts and his concerns.

Mr. **Evans**. Thank you, Senator. There were a lot of issues raised there and I have comments on all of them.

Frankly, one thing I did want to point out is, with respect to bycatch, we recognize that as a management issue and we have been trying to act responsibly to come up with some limits. There should be bycatch limits for our fisheries, there should be bycatch limits for the other fisheries.

Senator **Breaux**. There are no bycatch limits? Do you not have limits on bycatch at all?

Mr. **Evans**. The only bycatch—oh, yes, there is an interim bycatch regime, that we have had bycatch limits for two years and NOAA has an emergency regulation in effect right now.

It is certainly something that needs to be refined and we are trying to work on it along with the rest of our colleagues in the industry.

Senator **Breaux**. Mr. Peterson, is that a product of the council?

Mr. **Peterson**. Yes, it is.

Senator **Breaux**. Is it being enforced to any degree, do you know?

Mr. **Peterson**. I think it is being enforced, yes.

Senator **Breaux**. How do you know if you do not have observers on board?

Mr. **Peterson**. We do not. But let me talk about the observer program if I might.

I think that is important. At the council level, probably eight or nine months ago we had a proposal to develop a comprehensive data collection system. That includes observers.

The council has selected a technical committee, composed of the best scientists available, to tell us what we should do, the sort of information we need, how to go about getting it. And we also have a council committee that will address those same issues that the technical committee raises in order to come up with a system.

This is in the form of amendments to our two FMP's. We have two major FMP's, one in the Gulf of Alaska, one in the Bering Sea. As this progresses through the cycle of the system we use in developing FMP's, I suspect we will have amendments to the Act that in effect will say, thou shalt not fish without appropriate observer coverage or data gathering systems in place.

Senator **Breaux**. So you are telling the committee that the council is moving in the direction of requiring observers on board the factory trawlers?

Mr. **Peterson**. That is correct.

People talk in terms of having 100 percent observer coverage, but that is not really possible because all vessels cannot take observers aboard. Some are too small. Some fisheries require observer coverage more than others. The financial burden, if it is required that each individual fisherman or vessel takes his own observer, becomes very burdensome for smaller vessels.

Not only is it a cost of $7500 per month approximately, but if the vessel has a crew of ten he loses one man. He has to make room for the observer. A large vessel, that is not as significant.

But this gets to the issue of funding, and funding is one of the major problems we have. I touched on that because I think this is the most significant issue that concerns the observer coverage program.

In order for funding to be effective, it must be mandatory. We have tried voluntary programs. They do not work.

It must be regional. I think Senator Stevens mentioned the fact that we do not need—what is appropriate in our region may not be appropriate in the Gulf.

The funds that are collected must be dedicated to that particular purpose for which they were collected. And the assessment of the fees must be fair and equitable. That is not easily done, to determine that sort of a program.

We think that the Administration's proposal for user fees and license fees is not well crafted. They are looking at a recovery of $60 million and then they are going to discover or determine how to spend it. I do not think our industry would support that at all.

I think they might support a system whereby we have what I would call a cost recovery system, where we determine what the cost would be before we make the assessment to recover those funds. I think that would be supported.

Senator BREAUX. Mr. Thomson, you have observers on your crab vessels, do you not?

Mr. THOMSON. Yes, Senator Breaux.

Senator BREAUX. And that is under the state requirement or what?

Mr. THOMSON. That is under the State of Alaska requirement, yes.

Senator BREAUX. Who pays for those observers?

Mr. THOMSON. The cost of the observers is borne by the vessel owners, the crab catcher-processors, because they are processing at sea and it was found that harvesting of undersized crab was occurring in the king crab fisheries and the industry requested 100 percent observer coverage on catcher-processors.

Senator BREAUX. Do you all feel that is working?

Mr. THOMSON. Yes, we do feel that is working.

Senator BREAUX. Mr. Evans, you indicated that your members are considering or would be willing to help pay for observers on board your vessels?

Mr. EVANS. Yes, Senator Breaux.

But let me point out on this crab catcher-processor program, that cannot be construed as an observer program on Mr. Thomson's vessels. It is limited to catcher-processors. He I believe has four or five catcher-processors in his association and the rest are all just catcher boats.

An observer program needs to be across the board evenly spaced, so that adequate data can be collected. So you know, I cannot let that go on as being an observer program on the crab boats.

Our vessels have been carrying observers this year pursuant to a program where we challenged the industry to match funding of a program. We offered an initial $100,000 to fund observers and we offered to match industry contributions up to a total of a half a million dollars from our group, as a stopgap measure for observer coverage for this year.

Senator **Breaux**. All right, I think we have some good discussion on observers on your vessels and also Mr. Peterson's comments as to what the Council is developing.

What are the other comments that Senator Stevens made that you want to respond to?

Mr. **Evans**. One other, Senator Breaux, was with respect to floating processors. The Alaska processing industry has been largely based on floating processors. The salmon industry has a large percentage of the salmon processed by floating processors. The same goes with herring.

Floating processors are not new to the Alaska fishing industry. In fact, some of these very same shore processors that are asking for the preference in groundfish fishing have mobile floating processors that they take around the state and process salmon and other traditional species with. And I just wanted to point that out.

Senator **Breaux**. Gentlemen, I think that we have probably touched on the points in your testimony that we wanted to cover. I thank all of you for being with us. Obviously we have got some conflicts out there. Hopefully you will be able to participate in helping resolve them.

It is good to see all of you again. We appreciate it.

This will conclude this panel. We thank all of the panel members who have testified.

It also concludes our hearing and the subcommittee will stand adjourned until further call of the chair.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned, subject to the call of the chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM MAINE

I am pleased to raise issues for consideration in the reauthorization of the Fisheries Management and Conservation Act (FCMA). I also am pleased to acknowledge the testimony before the Committee of Ms. Barbara Stevenson of Portland, Maine, who is a former member of the Mid-Atlantic Fisheries Management Council and is highly-regarded throughout the Northeast industry.

The most important task for Congress in the reauthorization should be to keep issues in a proper perspective. The concerns I raise are offered from my own perspective as Senator from the State of Maine, which has a major stake in the future of New England's fishing industry; and also, as a member of the Senate's Environment & Public Works Committee, as well as the National Ocean Policy Study (NOPS), with a very strong interest in marine science and ocean environmental issues.

I also am a member of the Senate Finance Committee, with jurisdiction over international trade issues. In the previous Congress, I led efforts on the Finance Committee to promote the interests of the fishing industry during consideration of the Free Trade Agreement between the United States and Canada.

In approaching the FCMA reauthorization, I believe the following general premises are important:

The Federal Government must not bureaucratically alter the traditional character of the American fishing industry. The regional structure and focus of the FCMA should be maintained and strengthened. At the same time, the FCMA must recognize that issues affecting one region inevitably present implications for other regions, and the FCMA decision-making structure must accommodate such relationships.

Good science is necessary for good fisheries management. Management practices must be based on premises supported by sound research and data. Increased Federal support and coordination for regional scientific research is urgently needed.

Fisheries management practices inevitably pose international trade implications. This is particularly true for the New England fisheries relationship with Canada. The United States should be sensitive to legitimate differences between our respective fisheries management systems; however, through the FCMA, the integrity of the U.S. fisheries management system must nonetheless be vigorously upheld.

For the State of Maine, the fishing industry is one of our most important heritages. Since 1984, Maine fishermen have fought hard to adjust to the loss of access to fish stocks on Georges Bank in the Gulf of Maine, as a result of the World Court's US-Canada Boundary Decision.

More than anything else, New England fishermen need the Federal Government to allow them the opportunity to address industry challenges on their own—and to support them in their efforts, rather than impede them. That often means giving the industry time to work out problems—slowly, but surely, and systematically.

That process best occurs through the regional fisheries management councils. Individuals sometimes disagree with the councils, but the council process is better than the alternative: i.e., rigid management by Washington bureaucrats who may rarely step outside their offices, let alone onto the deck of a fishing boat.

There is concern in Maine over the recent decline in groundfish catches, such as cod and haddock. Between 1985 and 1988, New England landings fell by approximately 30 million pounds. In Maine, haddock landings declined from 1.8 million pounds in 1985 to 400,000 pounds in 1988.

Total groundfish landings for Maine dropped from 125.8 million pounds to 103.4 million pounds during the same period—with a decline in dollar value from $44 million to $33 million.

This decline has resulted in speculation that "The fishing industry is in trouble and radical changes are needed." The decline certainly represents troubled times for Maine fishermen. But it is not clear that "radical" changes are needed.

The New England Fisheries Management Council (NEFMC) implemented its current groundfish management plan in 1986. The first amendment of the plan was implemented in 1987, and a second one was adopted in 1989. A third amendment is under development, and a fourth amendment also already has been discussed. These amendments represent a careful, dynamic, and evolutionary process.

It also is important to keep in mind that fisheries management changes made within the last few years may not produce immediate results. The effects of changes may not be seen until several years from now. By the same principle, recent declines in fisheries landings may have nothing to do with current management practices, but rather, instead be the result of phenomena that occurred several years past. The status of fisheries resources depends on a complex interaction of forces, including the biology of fisheries stocks and the environmental quality of the ocean.

The interests of the fishing industry would be best served by NMFS by increasing emphasis on effective enforcement—and by joining in increased regionally-focused scientific research. In recent years, the Administration repeatedly has proposed to eliminate NMFS research funding. The very future of proper fisheries management and protection of ocean resources has been threatened.

As part of a broader effort to reverse this trend, I recently introduced legislation, S. 587 and S. 588, the "Marine Research Act" and "Marine Research Trust Fund Act," which are now under consideration by the Senate Committee on Environmental and Public Works—and on which I also look forward to working with members of the Commerce Committee.

Along with the NEFMC, I also have strongly supported a proposal by University of Maine Professor James Wilson to conduct a joint scientific and technical conference with Canada on our respective fishing industries.

Canada often has sounded the twin themes of "free trade" and "proper management." With the implementation of the US-Canada Free Trade Agreement and continued negotiations on the issue of government subsidies, fisheries management rapidly will become the next major, common challenge for our respective industries.

The challenge will require each nation to respect the other's management system—and to learn from each other. The "Wilson Conference" is intended to provide a foundation for beginning that process. It also is a precondition for any future progress in fisheries relations between the United States and Canada.

Differences between the United States and Canadian fisheries management systems were high-lighted in 1988 in differences between the U.S. minimum lobster size, as adopted by the NEFMC, and lower Canadian minimum sizes. Imports of lobsters from Canada represent approximately 50% of the U.S. market; as much as 30 percent of these imports are below the U.S. minimum size. This difference has undermined the integrity of the U.S. lobster management plan, and created an open risk of a black-market in "short" lobsters.

Because the NEFMC lacked clear authority under the FCMA to impose a prohibition on the import of short lobsters, as part of its overall lobster management plan, I introduced legislation in the 100th Congress to impose a statutory prohibition. The Senate Finance Committee recommended the provision for inclusion in the US-Canada Free Trade Agreement enabling legislation, but President Reagan dropped it from the final legislative submission to Congress.

Since then, Canada has been moving to increase some of its own minimum lobster sizes, and the NEFMC is considering a proposed delay and review of the next scheduled increase in its own Federal minimum size. The U.S. Trade Representative also is considering prohibition of imports of Canadian "short" lobsters as a possible retaliatory action in the ongoing West Coast Section 301 trade case. In light of these developments, I am holding off on any decision to reintroduce last year's lobster legislation. However, I advise the Committee that I may seek to pursue such legislation at a later stage in proceedings on the FCMA reauthorization or similar legislation.

The Committee also may want to consider generally whether statutory clarification is needed within the FCMA to grant the regional management councils the clear authority to impose conditions on imports when necessary to protect the enforcement and integrity of U.S. fisheries management plans.

The U.S. fisheries relationship with Canada also has bearing—believe it or not—on the issue of "driftnet fishing" in the Pacific Ocean, and trawling in the "Doughnut Hole" of the Bering Sea.

There presently exists a difficult situation with Canada regarding fishing in international waters of the Northwest Atlantic, just outside Canada's 200-mile limit, in the area known as the "Tail of the Bank." Canada has adopted a deliberate policy of denying non-emergency port services to U.S. boats fishing in the region. The Province of Newfoundland and Labrador officially has called for "extended functional fisheries jurisdiction" beyond 200 miles.

In addressing the problems of driftnet fishing on the high seas in the Pacific Ocean, and trawling in the "Doughnut Hole," I consistently have maintained that no action should be taken that creates any new precedent under international law—that might be used by Canada against U.S. interests in the Northwest Atlantic.

Fisheries policy on the West Coast inevitably poses implications for the East Coast—and vice versa. Based on that principle, I have supported efforts by the U.S. Trade Representative in challenging Canadian export restrictions in the West Coast Section 301 trade case. I also am supportive of efforts to stop the interception of salmon by Japanese, Taiwanese, and Korean driftnets on the high seas. During the 100th Congress, I worked to fashion legislation which would accommodate both East Coast and West Coast interests in this regard.

Having participated in the enactment of the 1987 driftnet legislation, I have been interested in the recent negotiations with Japan on the issue. The agreement that was reached on May 2, 1989 will result in unprecedented scientific and environmental data; and will provide a basis for continuing to develop a cooperative relationship with Japan to address the driftnet problem. It also will increase pressure on Taiwan and Korea to reach driftnet agreements with the United States.

Although the proposed US-Japan agreement does not resolve all driftnet problems, it must not be negated by an Administration decision to move with sanctions against Japan at this time. Without the agreement, no further progress will occur. The agreement represents a logical step under the Driftnet Act—which should be followed by additional steps, as the United States continues to press the issue. The interests of both the West Coast and the East Coast will be served by this strategy.

STATEMENT OF HON. BROCK ADAMS, U.S. SENATOR FROM WASHINGTON

Mr. Chairman, thank you for the opportunity to discuss the implementation of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987.

I supported passage of this legislation, because of the hazards that driftnet fishing poses to our marine environment and its living resources. We have more and more evidence as time goes on that the driftnet fisheries of Taiwan, Korea, and Japan are engaged in the systematic illegal catch of US origin salmon. In Washington state, we have invested a lot of blood, sweat, and money in working together—local governments, Indian tribes, salmon fishermen—to rebuild our salmon stocks. To have the results of this hard work stolen from us is unacceptable.

In addition, driftnet fishing by foreign fleets has serious adverse environmental impacts. It has been estimated that large amounts of marine mammals and sea birds die in drift nets every year. Much of this destruction is related to the illegal nature of these fisheries. For instance, driftnet vessels fishing illegally in US waters that are approached by the Coast Guard sometimes cut the net loose to destroy evidence of illegal fishing. When this happens, those highly durable net may travel the North Pacific for years as "ghost nets", wreaking havoc on innocent wildlife.

The Driftnet Act calls for monitoring and enforcement agreements with the driftnetting nations by June 29, 1989. The monitoring agreements must provide for statistically reliable cooperative monitoring and assessment on the direct and incidental catch of fish, marine mammals, seabirds, and other living marine resources. The enforcement agreements must provide for joint enforcement of laws, regulations, and agreements relating to driftnet fleets.

It is in terms of the requirements of this statutory language that we must evaluate the recent tentative driftnet pact with Japan developed last month in Tokyo. Judged in terms of the negotiating performance of the other driftnetting nations, the Japanese performance has been exemplary. They have come to the table and participated in genuine negotiations. Taiwan and Korea have not. Judged in terms of existing agreements with the Japanese for monitoring of high seas fisheries, the agreement represents a step forward. But judged in terms of the requirements of the statute, it is inadequate.

That is why I have contacted The Secretary of Commerce, Robert Mosbacher, and indicated that I feel it is inappropriate for the Secretary of Commerce to find that this agreement meets the requirements of the Driftnet Act.

First, the agreement provides for 32 observers (of which 14 are North American) on a squid fleet of over 450 vessels. Coverage of the remainder of the Japanese driftnet fleet is even more limited. The agreement includes only one observer for the "large-mesh" fleet of over 450 vessels, and no observers at all for the "salmon" fleet of over 200 vessels. While these numbers reflect permits, and there is some overlapping between fleets, this level of permit coverage is clearly inadequate to generate the statistically reliable information required by the statute.

In addition, the agreement is fatally flawed by the failure of the Japanesse side to accept a US proposal to carry automatic real-time satellite position fixing devices on board a certain number of their vessels. Only through placement of such a device can we be assured that the catch of the observed vessels provides a reliable sample of what the fleet as a whole is catching.

Mr. Chairman, the failure of this agreement to meet the requirements of the Act does not mean that this latest round of negotiations has been in vain. We now have a foundation to build on in future negotiations. I do not believe that finding that this agreement does not satisfy the Act, and the automatic certification of Japan under the Pelly Amendment that must subsequently occur, means that we are on a downhill slide into an all-out trade war. Instead, I feel we can negotiate further this year in a better bargaining position, and hopefully obtain an agreement consistent with the requirements of the statute.

Statement

of

Frank B. Bohannon

President

American High Seas Fisheries Association

Mr. Chairman and Members of the Committee:

My name is Frank Bohannon, I am the president of the American High Seas Fisheries Association. Thank you for this opportunity to submit testimony on the MFCMA oversight. I request that this testimony be incorporated into the record in full.

American High Seas Fisheries Association is a non profit Association comprised of 26 wholly U.S. owned and operated fishing vessels from the States of California, Oregon, Washington, and Alaska. The vessels, which range from 80 to 130 feet have, until recently, been fishing in over the side joint ventures in the Bering Sea and Gulf of Alaska.

The following table indicates the approximate catches delivered to processors during the past two years.

Specie	Approx AHSFA Catch	JVP Tonnage	% of JVP
1987 Pollock	567,855	1,089,803	52.11
P. Cod	1,975	94,938	2.10
YF Sole	29,850	181,900	16.41
Total	599,680	1,484,110	40.41
1988 Pollock	401,939	816,678	49.22
P. Cod	2,366	112,584	2.10
YF Sole	57,529	212,394	27.10
Total	461,834	1,291,634	35.76

These catches are a partial reflection of our commitment to and dependence upon the fishery. Our commitment and dependence upon the fishery is further extended by the equity represented by the value of our vessels, the time we have spent in the fishery, including time spent charting the grounds, the hang-ups, developing new technology, and the development of clean off-bottom fishery methods, and our payment of the cost of 100% observer coverage in the JVP fishery upon which the present management of the fishery is largely based. Some of our vessels have been in the fishery since 1979. This will give you an idea of what we regard as our position in the fishery. Recognize these catches are our share of the 2 million metric ton OY cap taken during those years.

The purposes for which the AHSFA was formed in 1987 include (1) to promote responsible behavior by the members towards the resource. (2) To promote the "Americanization" of the fishery. (3) To protect the freedom of the U.S. fisherman to sell in the market of his or her choice.

Presently most of our vessels sit idle, tied to the dock with little market opportunity.

May we predicate our comments by saying that we believe the renewable resource and its harvestable component is finite and the common property of the American people. We look upon the national program of conservation of the resource and management of the fishery as being the act of balancing the finite harvestable fish side of the equation on one hand with the effort and capacity of the human side on the other. It follows that a commercial fishery is a living relationship between these two sides of the equation. If one or the other side is absent, for whatever reason, a commercial fishery ceases to exist. Changing the means by which humans may access fishing or processing capacity produces ripple effects both on the fish and human side, including the socio-economics from harvesting through market levels.

(1) Responsible Behavior Towards the Resource

The following are our concerns that relate to: the data needed for stock assessment, full accountability of fishermen in regard to their withdrawals from the common fish property, a need for observers in terms of both of the foregoing points, the costs of management, daily catch log books, discards and waste of both prohibited species and target species, full utilization of the resource, and roe stripping. Donut hole pollock; limited access options; OY cap; structure and function of the North Pacific Council; State jurisdiction to 12 nautical miles.

Full Accountability. Full Untilization

In regard to the present wasteful and unaccounted for behavior which we believe is widespread in the fishery we feel it is instructive to refer to the words of Senator Kennedy, on January 26, 1976, during the FCMA debate ." It's support (the Magnuson Act) comes from those who believe deeply not only in our responsiblity to the fishing industry which served this nation well for so many years, but also from those who want to maintain our Nation as a food producer and exporter with ongoing responsibility around the world to feed the hungry people... Mr. President there is no doubt that between 1.5 and 2 billion people on this earth go to bed hungry and live under the shadow of starvation. There is no question that we in the United States of America have been richly blessed not only by the abundance of our natural resources on land but also by having 25% of the world's fishery resource off our shores... There is no question and it has been brought out in debate that we Americans have no reason to hold ourselves above all others."

We support full accountability within the fishery. We recognize that certain levels of data are needed both from fishermen and in terms of stock assessment research upon which a scientific approach to management may be based. We advocate full accountability on the part of fishermen of their withdrawals of all fish under the Optimum Yield defined for a fishery. In this regard we support the implementation of an observer program to both collect scientific data on one hand, and to oversee certain defined behavioral aspects of fishermen toward the fishery. We also support the imposition, upon ourselves, of the keeping of daily catch log books. In regards to full accountability and responsible behavior towards the resource, we support a policy whose thrust is towards full utilization of all fish taken under the defined Optimum Yield of a fishery. We support full utilization of all fish caught under management; first for human then industrial uses. We oppose roe stripping unless it is accompanied by full utilization of the carcass for human or industrial purposes. We oppose the discarding of these or any other carcasses into the fishing grounds. Also in regard to waste and full utilization we advocate the studies needed to support the thrust of such a policy in that grinding of heads, guts, frames, and gurry or the installation of meal plants on catcher processors be considered a necessary requirement for entry into the groundfish fishery. It seems ludicrous that we have taken a step backward from the foreign fleets that we have replaced and instead of ships that utilize every fish that is taken aboard we rip through the resource as fast as we can with only regard as to how much money can be made in the shortest possible time. Upon consideration of this matter we would urge that those vessels presently in the fishery without such facilities be required to install them within a time definite.

Under a policy of full utilization we support stringent measures designed to minimize the discards of catch of prohibited and target species, which waste we are presently aware of in the fisheries. Such unaccounted for withdrawals may represent overfishing in terms of the defined OY. Furthermore AHSFA vessels could use that wasted fish profitably now!

Observers

With regard to an observer program, we contend it is absolutely necessary, both for stock assessment and for monitoring compliance of the implementation of a full utilization policy. With regard to data needed, we support the notion of 100% mandatory observer coverage. This means that all vessels in the fleet must accept the advent of an observer onboard whenever management decides it is necessary. However, we recognize that with regards to data needs, 20% coverage of the disposition of catch under the OY may be adequate.

User Fees

With regard to user fees, we support the thrust embodied in H.R.1554 introduced 21 March by Congressman Young from Alaska. In recognition of the privilege we hold in having access as American fishermen to the common property of all Americans, we support the notion of contributing towards defraying the costs of such an observer program. However we recognize the implementation of this much needed program will take some time. In the interim we request the $7.5 million budgeted for a natural resource observer program under the Marine Mammal Protection Act Amendments be made available now. About $3.0 million of this should be made available for observers in the GOA/BSAI fishery if the 20% coverage is to be attained. Mandatory landing, forfeiture and sale of prohibited species; levies on imported fishery products and the use of Saltonstall-Kennedy program funds for defrayment of such costs of management ought to be considered.

We support the thrust of Congressman Young's bill and the amendment that it would require to the Act to allow more than just administrative fees to be collected. In other words fees to defray cost of management over and above administrative costs. We would like those fees that are collected in the region to be collected throughout the fishery in a fair manner and, to the extent possible, be retained in the region and be used for identified and defined needs of management. We request that the fee level be pitched towards needs that are defined cooperatively between the managers and the industry participating. We do not want to see those fees loaded with all sorts of other perceived program needs unless they are agreed to by the industry and the managers.

We feel it is fair to say that the system as embodied by the Council process has been caught unprepared by the rapid "Americanization" of the fishery in regards to data needs. Far too great a reliance was placed on the data from imposing 100% coverage on the foreign and joint venture processing components of the industry with no such imposition on the DAP sector of the industry. Now that there are no foreign fishermen in the North Pacific, and joint venture processing is at the margin at best, there is a gap in the provision of vital data needs for management. The practices touched upon above with regard to the DAP fleet are recognized as being rampant, unobserved, and unaccounted for presently. This is socially, morally, economically, biologically, and environmentally unacceptable. However it is also recognized that this is an interim situation to the imposition of the necessary constraints upon participants in the fishery. In fact, if the need for data is paramount then the notion of allowing up to 20% of the OY to be caught under the joint venture processing mode with 100% observer coverage should be given serious consideration.

Bycatch

With regard to bycatch, we support the imposition of incentives within the management programs that encourage clean fishing and the minimization of bycatch and the associated discards of either fish which are a target species for other fisheries, be they prohibited species or not. We are speaking here in terms of development of cleaner fishing methods, including a better use of existing technology to accomplish off-bottom fishing where possible.

Furthermore, wasteful discard mortality is unconscionable. Mandatory retention, processing, storage, landing, forfeiture without profit; and sale with proceeds applied to cost of management, would constitute an incentive for minimizing bycatch. Especially if applied to prohibited species. The U.S. lags world fishery practice in this regard.

We also advocate the expression of bycatch (of prohibited species caps) in terms of percentages, not absolute numbers. Absolute numbers can completely hold another fishery hostage in a case where populations of prohibited or bycatch species fluctuate in abundance, therefore rendering the absolute numbers unreasonable and inappropriate as an expression of a fisheries management measure. We request the percentage bycatch be not below a level which is both statistically and biologically meaningful, e.g. 2%.

Donut

With regard to the present unregulated international pollock fishery in the central Bering Sea area called the donut, we have advanced our views towards an interim solution to the Department of State. Whilst we recognize the rights of fishermen on the High Seas, we have advocated a multi-lateral cooperative approach in the donut and in the FCZ by suggesting that both the U.S.S.R. and the United States, being the two Coastal States to which the donut pollock is most initmately related, be prepared to allow a measure of joint ventures between those donut High Sea fishery nations and themselves. In short we have suggested the provision of a carrot to compel the donut participants to forgo all or part of their donut operations. The carrot is ~~an~~ interim level of joint venture for an interim period within the conservation zones of the two Coastal State nations, but in exchange for the carriage of observers, both during the joint venture fisheries under Coastal State control, and to the extent that a portion of the donut fishery would still occur, that they carry observers back into the donut as well. In this way the participants would agree to a measure of regulation and certainly the much needed sharing of data on catches and withdrawals from that area. Hence, both an opportunity would be created to solve an international problem and the domestic problem of the U.S. vessels in transition from JVP to DAP.

OY Cap

We recognize that the present OY cap in the Bering Sea, of 2 million metric tons, was a device to both accelerate the exclusion of foreign participation in that fishery and to control the amount of fish coming on to the world market. The use of available stock assessment information in the development of the OY has been conservative to say the least. Scientific evidence, in our opinion, on the face, indicates that the OY could be significantly higher. However consistent with our testimony before the North Pacific Council in December, we advocate a raising of the Optimum Yield only if some form of controls on effort entry into the fishery are made. This would prevent a further acceleration of the present unbridled entry of new effort from eroding the position of those fishermen already in the fishery. We advocated a moratorium on new entry in December, for a period of two years, to enable the Council to evaluate the options for future groundfish management and settle on a new regime.

We support the present investigation into the legality of the OY Cap being set at 74% of the sum of the ABCs.

Limited Access Options

The Council is presently considering three options including open access, license limitation, and a form of individual transferable quotas. The Council, in the past, had constituted a future of groundfish committee. There were many advocates at that time for some form of limits on entry into the fishery. However action was not taken to implement such a program. In December we urged the Council to be courageous in the face of opposition to limited entry and to implement some form of moratorium to buy the fishery time and preserve the position of those already in it. In

January a cutoff date for new entrants was proposed. In April it was discarded. The effort continues to accelerate into the fishery in an uncontrolled fashion. Our rough estimates indicate that within two years there will be at lease twice the amount of necessary capacity to take the available 2 million metric ton optimum yield. The rapid development of the catcher processor at sea fleet has been in response to the Congressional challenge to "Americanize" the fishery. However as indicated in the April Council meeting by calls for some form of preference to vessels fishing shoreside and by extension to the plants to which they fish, there is a fear on the part of those already within the fishery that their positions are being eroded and will be destroyed if this influx of effort continues into the fishery. There are presently around 50 catcher processors in the fleet and there are reports of plans for at least 60 more. Even if half of these materialize there will be around 90 catcher processors in the fleet by the end of the next two years. Whilst there may be a philosophical bent among fishermen which opposes lines being drawn on the map and restrictions being placed on them as individuals, no sane fisherman, especially those smaller inshore vessels delivering to shoreside facilities can stand by and run the risk of having their future destroyed by the unbridled activities of extremely mobile and efficient at sea catcher processors. A classic example of the risk referred to is the closure in March of the Gulf of Alaska pollock fishery as a result of the available TAC being used up three months into the fishing year. This exemplifies the mobility and the unrestricted nature of the catcher processor fleet who were acting quite within their present rights under the law, which does not presently restrict where and when they take their fish. However, on the other hand, it also exemplifies shortcomings in the present catch monitoring abilities of the management agency and their data collection or lack of it in a real time sense.

Soon many of the AHSFA vessels, may be fishing for shorebased processing facilities. It is true to say that, given the fact that these vessels have chosen to contract themselves for three years to these plants, they do not want to run the risk of being cut off at the knees as happened in the Gulf of Alaska in March, three months into the first year of their contract. Therefore, we would support some consideration be given those vessels servicing the needs of shorebased facilities, to protect them from the possible destructive effect that may be wrought by catcher processors as evidenced in the Gulf of Alaska, under the present open access fishery management regime.

The North Pacific Fishery Management Council

The structure and function of this Council is not optimal. This is due to the present structural imbalance within the Council make-up on a State to State and industry component basis together with the lack of qualifications of a number of the Council members, and their proclivity towards, in many instances, playing to their constituents rather than getting on with the job of balancing the man-fish equation.

We submit that the present make-up of the NPFMC is tipped in favor of Alaska. The six Alaska voting members can carry any issue. This means that the management process, rather than being based on objective science, tends more towards political management. We advocate at least one new member representing the commercial fisheries from each of the States of Oregon and Washington be added to the present Council membership. Furthermore the representation of industry components is not reflected in the Council make-up (PL 99-699 Section 113).

We submit that many of the existing members are unqualified to manage fisheries. We perceive by their actions that they have been selected for council representation based on political grounds rather than based upon their qualifications to participate in the management process. We therefore advocate a tightening of the qualification requirements for Council appointments.

It is also tempting to advocate more accountability be placed on the Council for its actions by, for example, making the Council subject to the Administrative Procedures Act. However, for now, in the interest of a system that is more rather than less responsive to the real time needs for management in the fishery, we would be satisfied if our above three suggestions were acted upon.

State Jurisdiction

We oppose extension of Alaska State jurisdiction over fisheries to 12 nautical miles.

(2) To Promote "Americanization" of the Fishery

Our following concerns relate to: the accelerated displacement of the traditional U.S. fishermen by foreign wagons drawn by U.S. horses; through the use of integrated at sea catcher processors, largely foreign in content, as "DAP" under interpretation of the Processor Preference and the Anti-reflagging Act; and removal of market options. Implementation of the DAP survey; lack of DAP accountability in real time, support for GAO investigation into this process and foreign content and control via agencies including U.S.C.G, IRS, Immigration, Customs, Justice.

We support the notion of "Americanization" but have grave concerns about the nature with which the process has occurred.

In 1976 the Congress, in the face of world opinion centered within and around the Law Of the Sea treaty negotiations, unilaterally created the largest limited entry fishery in the world by extending the limits of U.S. jurisdiction over fish resources off our coasts to 200 nautical miles. U.S. fishermen were accorded preferential access over foreign fishermen. Then in 1978, within the "big fence" was created a further resource access preference for U.S. processors.

In 1978 U.S. fishermen agreed to the Processor Preference Amendment to the Act. At that time U.S. fishing capacity far outstripped the ability of U.S. processors, traditionally of salmon, to process their catch. In their support for the Amendment, U.S. fishermen were patriotically supporting added benefits to the nation through value added processing within the United States industry. U.S. fishermen did not envisage the chance of themselves being disenfranchised of their position in the fishery. At that time their vision, and the vision of the Congress, was that shorebased and at sea processing facilities would expand to receive their catches. Prior to this time, you will recall, there had been two attempts, (the Sea Freeze Pacific and Sea Freeze Atlantic), at at sea catcher processing. It is our understanding that in the early seventies these operations went bankrupt. However as you know, the reality has been that the fishery has been largely "Americanized" through the uncontrolled influx of effort capacity in the form of the integrated at sea catcher processor. This is new catching and new processing capacity. Furthermore subsequent changes to rules governing access to such capacity, the manner in which they have been interpreted, has, we maintain, tipped the balance towards foreign rather than U.S. content within the fishery.

Under the law these units are legally able to enter the fishery as DAP and displace the catch history of U.S. harvesters fishing in the JVP mode which don't yet have a DAP market. The majority of these vessels sell their catch in the international market just as U.S. harvester vessels sell to foreign processors and are merely another form of joint venture. Many of them are wholly or partly foreign owned and become U.S. citizens through corporate fronts. We believe much of this influx of new effort represents the desire of foreign entities to gain a position in the U.S. "Americanized" fishery. We are not accepting that their position be gained at the expense of the traditional U.S. coastal fisherman. Furthermore the Anti-reflagging Act of 1987 removed reflagged processor vessels as a market option for U.S. harvesters and opened the door for the accelerated displacement of those harvesters by the integrated at-sea-catcher-processor; exacerbated by the use of the Processor Preference.

With regard to the question of management and conservation as raised under one, it is plain to see what happens to the equation when the harvestable fish side is held fixed and the human effort side is held totally open and uncontrolled. In short, the share of the pie among the fishery participants decreases. Under an open access system one may experience what the Gulf of Alaska experienced in March of this year. The fishery becomes over-capitalized and if the fishing effort is not controlled the resource becomes over-fished. Both sides of the equation become losers. We as American fishermen and our children will be the losers.

"DAP" Needs

With regard to the DAP survey in which domestic annual processing needs are assessed and that which is surplus is allocated to the JVP sector, we have concerns as follows. Over the past 5 years the DAP requests have been inflated way beyond their ability to utilize those requests. Hence the high but decreasing involvement of the JVP sector of the fishery. Again we believe this points to the lack of, and therefore the need for, accountability on the part of the DAP sector of the industry. Up until now all focus has been on the business of accelerating the exclusion of foreign participation within the fishery under U.S. jurisdiction. Yet we believe foreigners have managed to retain their domination of this fishery both at sea and ashore. Accompanying this mind set within the context of "Americanization" has developed an attitude that it is OK to abrogate the Golden Rule and treat the foreign fishermen in a different way than American fishermen. Consequently we are in the bind that we are today as raised under (1), with regard to data, observers, etc., and the lack of incentive for clean fishing and resultant waste and bycatch and discard that results. We are aware of the practice of double-dipping by DAP operators in making their requests. We are concerned at the lack of real time reporting and data processing on the part of the industry and the agency. We are concerned about the light weight nature of the DAP survey. Although there are civil and criminal penalties associated with mis-reporting, we are unaware of one proceeding being brought against a DAP operator in the face of obvious mis-reporting. How may we bring a case against those who hide behind the veil of data confidentiality? We are working closely with the agency in an attempt to correct this situation. In this regard we support the effort of Congressman AuCoin from the State of Oregon in precipitating an investigation into this process.

Foreign "American" Content on a Level Playing Field

In regards to foreign involvement in the fishery, we include ourselves among wide spread industry concerns that this involvement, some of which may be illegal, has accelerated since the Anti-reflagging Act of 1987. This concern was raised in testimony by industry on April 12, and 13, before the North Pacific Fishery Management Council in their discussions on future management options for groundfish. The Council finally put the matter in the hands of NMFS enforcement, Juneau, to try and collect evidence upon which to base an investigation. We believe the agency is stretched to its resource limits in trying to do the basic job associated with conservation and management. We would, therefore, support the Congress or the GAO conducting such an investigation. Our concerns in this regard are five in number as follows. U.S. Coast Guard; interpretation of "conversion" and "rebuilds" under the Jones Act. The way in which these provisions have been interpreted, and implemented by industry are questionable, to say the least, in our view. We believe that the gross use of this agency discretion has in fact torpedoed the viability of the U.S. shipbuilding industry. In this regard we support the thrust of amendments proposed by the Shipbuilders Council of America to the Jones Act which are currently under consideration by the House Merchant Marine Subcommittee. Customs; the dutiable components of rebuilds and conversions have by and large escaped the customs net. In this regard we refer you to the testimony of the President of the Shipbuilders Council of America given March 2, 1989 on the vessel modification act, before the subcommittee of the House Merchant Marine Fishery Committee. Immigration; we suggest the manning requirements for many of these factory processing vessels may not be being adhered to. The IRS; tax implications associated with foreign subsidies and 130% financing arrangements within which we believe kick-backs are escaping the tax net. Finally Justice/U.S.C.G., the foreign control exercised within the new corporate entities formed around these catcher processors. We would support an investigation into the operations of government departments and industry in this regard. There is wide spread contention among the industry that there are illegal operators within the fisheries. If this is so the playing field is tilted and the matter needs attention. The position of those good faith operators needs to be vindicated. Our concern, as American wholly owned and operated catcher vessels, is that our position in the fishery under the open access system is being eroded anyway. This is additionally true and unacceptable if our catch histories are being absorbed by illegal operators, who in effect are displacing the true American coastal fisherman.

(3) To Protect the Freedom of the U.S. Fisherman to Sell His or Her Catch into the Market of Choice

Our concern is for fair and equitable access at the harvesting and marketing levels for U.S. fishermen; real time processor preference; management's present questionable ability to fairly balance the equation and prevent overfishing; acceptable shares of the common property; uncertainty for business; catch history and standards for access rights; request interim quotas for U.S.

harvesters in transition to DAP; and a proposal to give weight to U.S. content at the harvesting level in determining resource access priorities.

Real Time Equal Opportunity for U.S. Harvesters

We have already raised our concerns with regard to the implementation of the Processor Preference in which through the survey DAP operators are able to futuristically pluck figures out of the air. On the face of it it would appear that all American fishing vessels have an equal opportunity at the harvesting level. However, at the margin, together with the many other concerns raised herein, it becomes apparent the effect of the processor preference is to tie some U.S. harvester vessels up on the basis of DAP requirements. This is especially critical for us now that the process of "Americanization" is at a point where the JVP sector is at the margin. We suggest a different approach in that U.S. fishermen be able to catch fish and offer those fish to U.S. processors in a real time sense. If they cannot process them, the fish ought to be able to be sold by the U.S. fishermen to whomever, including foreign processors. Hence one sector would not so easily be able to unfairly circumscribe the efficient catching and marketing activities of another sector.

We refer you to Congressional intent surrounding the Processor Preference Amendment as embodied in the statement of Congressman Edwin Forsythe on H.R. 13340 (July 11, 1978. Congressional Record - House page 20053)

"If it is determined that U.S. processors do not have the capacity and intent to process all U.S. harvested fish from a particular fishery, then that amount of fish which will not be processed by U.S. fish processors shall be available for immediate sale to foreign fishing vessels for processing at sea. It is therefore not intended that U.S. fishermen must satisfy the requirements of U.S. fish processors before the fishermen can sell fish to a foreign processor." (emphasis added)

Given the present manner in which the Processor Preference is implemented; and combined with other forces we have referred to herein, we feel there is effectively discrimination against U.S. smaller coastal vessels at the harvesting and marketing levels. Rightly or wrongly many U.S. harvesters feel stripped naked before the processors. Not only are prices shoreside significantly lower than over the side JVP, U.S. vessels going from the JVP to shoreside are required to outlay in the order of $1 million dollars for R.S.W. installation so that they may become less efficient harvesters and at the same time the mules and warehouses of the shorebased processors. Perhaps this is evolution.

Again, we raise the comments of Congressman Ruppe on July 11, 1978 in regard to H.R. 13340. "It is not the intent to put fishermen at the mercy of the fish processors to the extent that if the fish processors have the capacity to process the fish harvested the fishermen in turn would have to sell at whatever price the processors themselves would offer. It should be understood that we in no way want to make the fishing industry subject to terms and conditions that might be unilaterally established by the U.S. processor industry."

We agree. However, the realities are that the combined circumstances in this fishery are that there are approximately 60 - 70 U.S. harvesters without a "DAP home". This enables processors to tend towards the unilateral situation mentioned. Those few of us who may have such a market consider ourselves fortunate. But it is not a situation that sits well.

We have touched upon the management and conservation issues surrounding the balancing of the man-fish equation. It is apparent what the effects are if one or other side of the equation is held fixed, open, or if components of either side are adjusted. Presently, under open access the human side is held open while the fish side is fixed, theoretically. The management system presently is not effectively controlling or monitoring the manner or means by which withdrawals from the fish side of the equation are made. We refer later to the means in terms of capacity and U.S. content in a new proposal for access preference priorities at the end of this section. Among other things, management's present ability to prevent over-fishing must be questioned. However it must be recognized that the entire system in the Northwest fishery is in a state of transition and flux. It must also be recognized that the present situation of open access and the incipient woes that we believe have been and will be created is not entirely the fault of the Council process. Rather, much of the blame for flip-flopping in the management process must be laid at the feet of the industry. Most of the present participants in the fishery have not faced a situation where, having over-fished one resource there is nowhere else to go. Hence there is a mind-set which supports the notion of maximum mobility, maximum flexibility, and maximum freedom to fish whatever resource whenever we choose. This is a manifestation of the basic tenant with which individuals are brought up with in America, believing in total freedom of the individual. In a fishery sense, the boom-bust cycle which this sort of behavior and attitude precipitates is also spoken of as being the "American way". However we do not believe this is beneficial to the fishery or the nation. If the groundfish fishery is allowed to go down this path and does become over-fished and the fishermen have nowhere else to go with their capacity effort, we do not believe this is in the best interest of the communities from which they come or for our economy at large.

When it is finally recognized that the fishery is over-capitalized there will be heard a call for buy back of effort in order to reduce effort to a more reasonable level. Who will pay for these buy backs?

Acceptable Share Holding

Within the open access system there has been no consideration of the share of the defined OY (common property) that any one individual or corporation may attain. When this is finally debated and settled upon, we believe there will be individuals who will have already exceeded the acceptable share of the resource. Who will pay to buy back their efforts to reduce their share to a defined acceptable level?

Uncertainty in the Fishery

Although philosophically fishermen oppose lines on maps or any restrictions on their movements as to what they should be allowed to withdraw from the common property fish resource bank in time and space, we believe we are reaching or have exceeded the point where serious consideration of these matters be undergone.

Already it is apparent that there is a juxtaposition of opposing views within the minds of individual fishermen and fishermen groups. This was exemplified in testimony before the NPFMC on April 12 and 13, 1989, with regard to the future options for groundfish management. On one hand both the smaller coastal fishermen and the factory processors, or a large majority of them, urged the Council to retain an open access system. Yet in the same breath the fishermen representing vessels fishing to shoreside facilities were calling for some sort of protection for their operations. And in light of the fact that the current open access system would result in shortened seasons, and further in the light of the fact most factory processor's business plans are predicated on an eleven out of twelve month operating year, that group, in the main, called for a continuance of open access. Is it any wonder that the Council is confused and its behavior reflects this flip-flop and juxtaposition of opposing forces? However, qualified members of a constitutionally balanced Council ought to be able to see the situation for what it is and rise above it in their job of managing and conserving the fishery. The present uncertainty creates an unstable business environment except for those whose business it is to pump new capacity into the fishery. The planning and investment horizon from harvesting to market is very short term.

Catch History Base. Standards for Access Rights

The members of this Association would like to see their catch histories, or a major portion of them, recognized as the basis of their continued access rights to the common property resource. A system which recognized catch histories would allow fishermen to choose the most efficient and economic market to provide their catches to, whether it be onshore or offshore. We are presently unable to support any of the options for management until such time as standards are developed as a base for access rights to the common property. On one hand we have a long term commitment and dependence upon the fisheries which is partially reflected by our catch histories. On the other hand there are accelerating calls, which we oppose, for development quotas by the people within communities who have never participated in the groundfish fisheries of the U.S. FCZ off Alaska. We are presently unaware of any such standards or a ranking of priorities given to a defined array of access rights to the common property. Again we are fearful that under the present law and under the present open access regime, of losing our equity and position in the fishery. This is further exacerbated by what we believe is a foreign dominance in the fishery to which we have alluded already. Therefore those of our membership who are in transition from JVP to DAP towards servicing shorebased processing plants find it difficult not to support some protection for their future market. The North Pacific Council is presently considering this issue and suggestions have been made to modify the Processor Preference Amendment to give some protection to those vessels fishing to shoreside plants and by extension therefore the plants themselves within their communities. The remainder of the membership either already are H & G catcher processors or intend to fish to a floating processor which has yet to come into the fishery.

Transition from JVP to DAP

As mentioned above the majority of the members are in transition towards attaining a DAP market through existing or planned shoreside and at sea processing facilities. The uncontrolled rapidity with the fishery has become "Americanized" and over-capitalized, has eroded the position of the U.S. JVP wholly owned and operated harvester vessels with a long standing commitment to and dependence upon the fishery; to the point of marginality. Some of the members have agreements, which if shoreside expansion occurs to plan, may not be implemented until late 1990 or after. The time between now and when these markets "kick in" is the transition time mentioned above. In the meantime they are dependent upon surplus to DAP to make their payments. This flood of new effort of course reduces the chances for surplus to DAP. As already mentioned we are working with the Agency to minimize this marginal effect by requesting it to tighten up its discretionary powers in conducting the process of establishing

DAP and therefore surplus available to JVP by requiring far greater accountability for access to and use of the common property resource.

Interim Harvester Quota

We now draw your attention to promises that were made by some Senators during the anti-reflagging debate in 1987. In exchange for our reasonable approach during that debate those Senators promised that they would take care of us and not allow the High Seas fishermen to be set adrift! We make the following request for your consideration. Recognizing that the "Americanization" process has caught us in transition from JVP to shoreside DAP, we would like you to earmark a portion of the OY for JVP transitional quota for our vessels. To assure you that this is not a ploy to extend joint ventures in time, we will provide you with the business plans to show the manner in which we will transit from JVP to DAP. We suggest this would provide a socio-economic band-aid to those U.S. harvester vessels in transition, as well as provide for the much needed continuance of the time series of data for management.

New Preference Priority Proposal

We propose that weight be given to U.S. content at the harvesting level in determining resource access preference. We suggest a converted "U.S. Vessel" (factory trawler) in which more than 50% of its cost including equipment was incurred in a foreign country or shipyard is no less foreign than a reflagged foreign processor. At least the latter could have provided a market option for U.S. harvesters.

Background

In 1978 PL 95-354 the Processor Preference Amendment was enacted We propose that the current (DAP, JVP, TALFF) three tiered preference for resource access be modified to reflect more accurately American content within the context of "Americanization".

In 1976 the MFCMA created a preferential access for U.S. citizens.

In 1978 the Processor Preference Amendment gave a further preference to U.S. processors and created the three tiered system.

At this time the Congress specifically treated processors and harvesters as two separate categories.

As mentioned, the vision of U.S. fishermen and Congress at that time has not happened in reality. Instead of U.S. processing capacity expanding to take our harvests, the integrated at sea catcher-processor has submerged that vision. Catcher processors do just that, catch and process. They don't buy from us, they displace us.

In 1979, Congress took specific action to address an anomalous U.S. Coast Guard ruling that would have permitted foreign vessels to be reflagged and used as fishing vessels in the then recently established EEZ. In clarifying its position on this issue, Congress made it clear that foreign built vessels were not to be used as U.S. fishing vessels in the EEZ. (See PL 96-61).

In proposing the provision which was ultimately included in Public Law 96-61, Senator Magnuson specifically noted that "it bears repeating that this amendment does not apply to processing vessels. It applies only to vessels engaged in harvesting fish from the 200 mile limit or our fishing management jurisdiction." 125 Cong. Record 21740, August 1, 1979.

Indeed, the Report of the Senate Committee on Commerce, Science and Transportation on S.917, which became Public Law 96-61, made it abundantly clear that there were strong policy reasons for retaining the right to reflag foreign built vessels for use as processing ships in the U.S.EEZ.

"On the other hand, the United States does not have a similar longstanding policy as to processing vessels. Furthermore, because two of the purposes of the FCMA (the Magnuson Act) are 'to encourage the development of fisheries which are currently underutilized or not utilized by U.S. fishermen' and 'to promote domestic commercial...fishing,' it is important to distinguish fishing vessels from processing vessels. Under the amendment in Section 2 of this bill, vessels engaged in the processing of fish within our fishery conservation zone would not be required to be U.S. built. Instead, existing law would remain in effect."

"The economics of developing the underutilized species, in particular, appears marginal at this time, and such development also appears particularly dependent upon the use of floating processors at sea. The committee does not believe that the amendment in Section 2 will have a substantial adverse impact on the development of our fisheries. However, the same confidence does not exist if the amendment were extended to apply to processing vessels, as foreign built vessels may be the only economical and feasible way of fully developing these underutilized resources in the near future. The committee intends to support the potential for developing markets and purchasing sources for U.S. fishermen and thus did not include processing vessels in the amendment."

Not only was the reflagging possibility raised and considered in the content of the 1979 law, it was specifically anticipated and encouraged and the bill received wide industry support.

The reflagging option did not happen however, for many different reasons.

(1) Most American harvesters, because of the high cost of pioneering the fishery did not have the capital to implement this provision. Markets were limited, costs high, and prices low.

(2) The American processing companies did not seem to favor this option.

(3) The foreign processing companies were not in favor of changing flags and falling under U.S. laws and regulations.

(4) The factory trawler fleet was being built by other means.

In 1987 the Anti-Reflagging Act was passed. That closed the provision for reflagging and with it an option for markets to U.S. harvesters as their JVP markets were being diminished.

The Anti-Reflagging Act, besides closing reflagging market opportunities, also was intended to put teeth into other provisions that defined parameters of what and who could operate in the fishery, vis a vis the vessels, where they could be built or converted; how they were to be manned, and who could own them.

Interestingly enough, the Coast Guard and Customs at this time, started to provide a very loose interpretation of what constituted a U.S. vessel and very loose quidelines on how much of a vessel can be converted overseas and still remain a U.S. vessel. Also, because these vessels which were converted overseas had a large processing component, the tight provisions on what constituted a harvesting vessel were relaxed.

Today we find a majority of the factory trawler fleet being converted and rebuilt in Norway, Japan, Korea, and Singapore. Many for foreign owners under U.S. Corporate fronts. These same vessels are receiving fish allocations in our waters and are competing at great economic advantage with and against American built, manned, and owned harvesters, processors, and factory trawlers. They are at the same time displacing many of the U.S. harvesters who have lost JVP market opportunities.

We take strong exception to this.

We propose that to bring equity to this situation there have to be changes in the Coast Guard interpretation of what constitutes a U.S. vessel.

Our recommendation would be that the law be strengthened to provide that any vessel that has spent more than 50% of its cost for both vessel and gear, in a foreign country, be considered foreign in relation to harvesting. It should not be considered a fishing vessel, but a processor that can only process fish in the U.S. zone.

Further, we recommend that any vessel found to be in violation of U.S. ownership provisions lose its license to catch and/or process in the U.S. zone permanently. Ownership should be interpreted as no more than 49% may be foreign owned no matter what U.S. business structure or combination structure is used. This should include, but not be limited to, Corporations, Limited Partnerships, etc. Violations of the ownership provision should have the same penalties as applied to Coastwise trade, 46 CFR S 67.17-8 once lost, Coastwise privileges can only be rehabilitated through special legislation.

Order of Preference

(1) DAP

(a) U.S. built, owned and operated, harvesters to shorebased plant.

(b) U.S. built, owned and operated, catcher-processors (factory trawlers)

(c) U.S. built, owned, and operated at sea processors (Motherships) delivered to by U.S. built, owned, and operated harvesters.

Some reasonable consideration should be given to vessels fishing to established shorebase operations which recognizes their relative immobility vis a vis the highly mobile at sea catcher processor fleet.

(2) Converted vessels in which more than 50% of the cost was expended in foreign yards or vessels with more than 50% foreign ownership and equipment that buy fish from U.S. built,owned, and operated harvesters.

(3) (a) U.S. built, owned, and operated harvesters delivering to foreign processors.

(b) catcher processors (factory trawlers) in which more than 50% of the cost including equipment was expended in foreign yards or whose foreign ownership is more than 50%.

If this category (3b) wants to revert to category # 2 it must commit as of January 1 for the entire year. A commitment is conditional on, but not limited to, taking all harvesting equipment off the vessel.

Thank you again for including us in these hearings and for your thoughtful and courteous attention. We will be available to respond to any questions you may have regarding these matters.

STATEMENT OF GREENPEACE U.S.A.

I am taking this opportunity to present [illegible]e views of Greenpeace U.S.A. in regard to the reauthorization of the Magnuson Fishery Conservation and Management Act of 1976 (FCMA). Greenpeace is an international environmental organization with offices in 21 nations and approximately 1.25 million supporters in the United States. My name is Alan Reichman and I am the North Pacific Campaign Coordinator for Greenpeace International.

As an environmental organization dedicated to preserving the viability of the marine environment, Greenpeace has an ongoing interest in policy relating to several issues that will be reviewed during the reauthorization process. We have engaged in considerable campaign activity relevant to the FCMA. Our organization has been active in the effort to mitigate the hazards of the pelagic driftnet fisheries, has participated in the proceedings of Regional Fishery Management Councils, has worked to preserve fish habitat from the dangers of toxic pollution, and has cooperated with the commercial fishing industry to address marine mammal/fisheries interaction problems.

Our statement covers a range of issues of concern to Greenpeace and concludes with a package of proposed amendments to the Act.

OVERCAPACITY IN U.S. FISHERIES

The Magnuson Act has fulfilled its primary goal. The "Americanization" of U.S. fisheries through the establishment of the 200-mile Exclusive Economic Zone (EEZ) has brought successes, and new challenges. Now that fish resources within the EEZ are almost fully harvested by the U.S., and most major stocks are fully or over exploited, policies to promote the growth of harvesting capacity in the U.S. industry must be replaced by policies geared to contain it.

In Alaska, for example, the factory trawl fleet, consisting of 50 or more vessels, is capable of harvesting almost the entire 2,200,000 metric ton quota of groundfish in the Bering Sea and Gulf of Alaska (which is two/fifths, by weight, of total U.S. commercial landings). Another 20 or more vessels are reported to be under construction, or are being planned, and are projected to enter the fishery within the next few years. This represents unacceptable and dangerous growth, yet nothing is being done to remedy this overcapitalization problem. Meanwhile, off the coasts of California, Oregon, and Washington, trawlers displaced from Alaska as a result of the phase-down of joint venture operations are moving into fisheries which are already fully exploited. And, in the Gulf of Mexico, the National Marine Fisheries Service (NMFS) reports that the number of vessels targeting shrimp is in excess of the available resource.

In New England, the status of groundfish stocks, and the fishery dependent on those stocks, is an area of special concern. The number of vessels, capacity, and effort have all increased substantially since 1977 while the stocks have declined even further. Groundfish stocks are now at historic lows, and given the number of vessels engaged in the fishery, the stocks are not likely to recover under the current management plan. Although scallop resources have shown impressive signs of recovery from the low levels of the early 1980's, there is concern in the industry that without limiting participation in the fishery there will be little economic benefit to the individual vessels involved.

All of this points to the fact that overcapacity is currently, or will soon be, a serious problem in most major fisheries in the United States. Excess capacity is disruptive not only to the health of commercially harvested fish resources, but also to the health of marine ecosystems as a whole, including marine mammal and seabird populations. Unfortunately, it is presently being inadequately addressed in a regional manner on an ad hoc basis.

The problem of overcapacity is a national one and we need a blueprint for national action. First, capacity must be measured with respect to available resources in all major fisheries. Second, the development and implementation of viable schemes for limiting growth or capacity must be made mandatory for fisheries where it is necessary. The details of plans for limiting capacity should be determined by the Councils. What we need from Congress is the mandate that such action be taken.

THE REGIONAL FISHERY MANAGEMENT COUNCILS

Modifications of the Act would be useful to improve the effectiveness of the Councils in attaining their objectives for conservation and management of our nation's fisheries.

Each Council should include a representative of an environmental organization as a full voting member. Section 2.(b)(5) of the FCMA establishes "environmental organizations" as one of the parties that are to "participate in, and advise on" the fishery management plans prepared and implemented by, the Councils.

Environmental representation on each Council would help to assure that fishery activities will not damage the environment and non-target marine species, and would serve to enhance the Councils' abilities to address habitat issues.

For too long, fish stocks, and the fishing industry, have borne the brunt of marine and coastal pollution. The diversion of water from salmon spawning streams in northern California, and the continued dumping of New York City sewage at the 106-mile dump site are just two striking examples of this.

The habitat provisions of the FCMA should be strengthened to enable the Councils to become more active and effective in preserving fish habitat. To meet this end, the Councils should be provided with increased ability to influence the actions of other agencies. NMFS and the Councils must take a leading role in defining those areas where preservation is critical to the protection of fish resources, and should work closely with other federal and state agencies to mitigate negative impacts on fish habitat. The recommendations of the Councils should be made binding in such instances. Towards this end, Greenpeace endorses the habitat provision amendments that have been presented by the National Wildlife Federation.

The Councils, and NMFS, in developing fishery management plans (FMP's) and amendments, should also more thoroughly consider the impacts of various gear types on habitats. The Atlantic Coral Plan, which prohibits the use of trawl gear, longlines, traps, pots and dredges on specified coral reefs, is a good example of this.

NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENT

Greenpeace opposes the recommendation by several Councils to eliminate the requirement that fishery management plans and amendments comply with the National Environmental Policy Act (NEPA). We believe it is necessary for the Councils to assess the impact of FMP's on the marine ecosystem, including non-target species such as marine mammals and seabirds.

Adequate environmental safeguards are not automatic elements of fishery management plans.

It is necessary that the NEPA requirements be maintained in order to assure proper environmental safeguards. Last year, for example, a Draft Supplemental Environmental Impact Statement (DSEIS) was prepared in response to a proposal to the North Pacific Fishery Management Council to increase the upper limit of the optimum yield range of Bering Sea/Aleutian Islands groundfish. The DSEIS reviewed the potential impacts of increased trawling activities on northern fur seals, Steller sea lions, and other non-target species, and examined concerns such as impacts on the benthic environment, and the potential for increased discard of net fragments and debris. Without the NEPA requirement, this broad-ranging review, which greatly benefited the Council in its decision-making process, would not have been carried out.

At a time when it is critical that other agencies take greater responsibility in mitigating environmental impacts in order to save shrinking habitat, it would not be prudent for the Councils and NMFS to lessen their environmental commitment.

MANDATORY OBSERVERS -- USER FEE REQUIREMENTS

Two areas of great concern in fisheries management are the lack of sufficient data upon which to base management decisions, and the difficulties experienced in enforcing fisheries regulations.

Observers provide timely data for the purpose of determining acceptable biological catch figures, setting total allowable catches, and modifying fishery management plans. Observer information would help to alleviate the all too common problem where a plan, based on the previous years' surveys and data, is slow to respond to rapid fluctuations in stock sizes and mobility. Observers would also provide immediate feedback to the Councils and NMFS as to the working effectiveness of particular management plans.

Regulations concerning by-catch of prohibited species and juveniles, discards at sea, time and area closures, and gear restrictions including minimum net mesh size requirements -- and monitoring of log book accuracy and reporting -- are all very difficult to enforce even with a pervasive and costly police presence at sea. The use of observers is a proven, and potentially cost effective, alternative. A combination of observer coverage with periodic enforcement at sea, and stiff fines and penalties for violations, will increase adherence to regulations.

Greenpeace recommends that the placement of observers be made mandatory in those fisheries where insufficient data exists to properly assess the status of stocks, and in those fisheries where management has proven to be ineffective due to enforcement problems. We recommend the use of observers as a means to gather necessary data to set quotas and properly manage fisheries resources, and to monitor compliance with fisheries regulations.

In particular, observer coverage should be reinstated on fisheries that were subject to observer coverage as foreign fisheries. These would include the rapidly expanding Bering Sea and Gulf of Alaska groundfish trawl fisheries where comprehensive data is now needed to protect two of our nation's most productive marine systems.

In this era of federal fiscal constraint, it has become apparent that in order to implement essential management and enforcement programs, the fishing industry must provide some funding. Fish stocks are a common property resource from which the industry derives significant benefits. Strong management is necessary not only to maintain the long-term economic viability of an important industry, but to preserve the sustainability of marine ecosystems and the marine mammal and seabird species that are components of them.

The funds provided by the industry should only be directed specifically to the observer and management programs for the fisheries which are required to pay the user fees. The Act should provide for establishment of a specified trust fund to ensure direction of the user fees into such programs.

NATIONAL STANDARD PROVISION FOR REDUCING DISCARD CATCH

Sufficient data to manage resources is often lacking due to unreported discard of juvenile and non-target species of fish. Also, excessive mortality of underutilized species may compromise the development and growth of future fisheries. Most important, however, is that the mortality of substantial amounts of fish in the form of discarded bycatch is neither currently measured nor considered in terms of the overall effect on the marine ecosystem.

We recommend that a national standard must be established to assess the extent and effect of discard mortality on fisheries management and the health of fish stocks. The reporting requirements for discard in all fisheries must be strengthened, and the degree of mortality must be regulated to minimize the negative effect of such a wasteful practice.

THE PACIFIC PELAGIC DRIFTNET FISHERIES

The pelagic driftnet fisheries of Japan, Taiwan, and the Republic of Korea are continuing to threaten a wide range of marine species in the North Pacific and Bering Sea. The 7 to 30 mile-long plastic driftnets being used by these fisheries are hindering effective conservation of valuable fish resources, such as salmon, billfish, and albacore, and are causing widespread incidental kills of marine mammals and seabirds. The kills of Pacific right whale dolphins, common dolphins, Dall's porpoises, northern fur seals, and other species represents the largest unnatural mortality of marine mammals in the North Pacific today.

Greenpeace strongly supports a phase-out of the use of large-scale pelagic driftnets. The U.S. must take the lead in effectively monitoring the pelagic driftnet fisheries, and move towards a phase-out of the use of pelagic driftnet fishing technology. The Congress should influence the Executive Branch to act in this direction. A statistically reliable observer program and effective enforcement system must be gained, and the International North Pacific Fisheries Commission (INPFC) should be expanded to regulate all high seas driftnet fisheries and should include more Pacific Rim nations. If the INPFC cannot provide the needed forum, an alternative North Pacific regional fisheries convention should be developed.

The recent observer agreement tentatively negotiated with Japan and Canada, indicate that the Administration, and the State Department in particular, have not taken a sufficiently assertive approach. The agreement does not provide enough observers to comply with the "statistically reliable monitoring" provisions mandated by the Driftnets Act. Furthermore, this agreement does not require transponders on driftnet vessels in order to monitor the location of the fleet. It is our position that under this agreement, Japan could be certified under the Driftnets Act.

Greenpeace recommends that the FCMA be amended to include a provision that will mandate the U.S. government to work towards the elimination of pelagic driftnet fishing by 1992. Greenpeace further recommends that the government work to expand the scope and jurisdiction of the INPFC, or negotiate a new North Pacific convention, by that deadline. In order to attain this goal, the Pelly Amendment should be amended so that trade sanctions against offending nations are not discretionary and are not limited to marine products.

At present, there is a danger that competition for dwindling resources with foreign fleets could provoke U.S. fishermen to begin using these large nets. As a proactive conservation measure, the FCMA should be amended to prohibit the use of drift gillnets longer than 1 nautical mile (1,000 fathoms) by U.S. fishermen. Institution of such a requirement will serve to halt any development of a U.S. fishery using this destructive fishing technique. If a U.S. industry develops around the use of this gear it will hamper all efforts to gain a phase-out of large scale driftnets at the international level.

The drift gillnet length amendment should apply to all U.S. fishing vessels whether operating in or outside the U.S. EEZ. Vessels should be limited to the use of no more than 1 nautical mile total volume of drift gillnet, whether in one or more segments.

Greenpeace also wishes to focus the Congress's attention on the rapid escalation of pelagic driftnetting in the South Pacific. During the 1988-89 summer fishing season, it is estimated that approximately 130 Taiwanese, 30 Japanese, and 2 Korean driftnet vessels fished for albacore and other tuna species in the South Pacific Ocean and Tasman Sea. It is estimated that less than 20 driftnet vessels operated in that area in 1987-88. If the driftnetting continues, not only will local populations of dolphins and seabirds be at great risk, but tuna stocks could become depleted.

The viability of albacore and other tuna stocks are important to the U.S. tuna fleet as well as to American Samoa and the Pacific Trust Territories. Congress should direct the State Department to work to cooperate with New Zealand, Australia, and other Pacific Island states to gain a moratorium on the growth of the driftnet fleets, and an eventual phase-out, in that region.

UNITED STATES/CANADA FISHERIES AFFAIRS

We would like to see greater cooperation between the U.S. and Canada in the area of joint management of shared fish stocks.

Stock collapses have occurred throughout the world as a result of uncoordinated international management. For example, in the Barents Sea, stocks of capelin have collapsed because of irresponsible management of the fishery by both Norway and the Soviet Union. The collapse of the stock, an important link in the marine food web, has severely stressed the Barents Sea ecosystem and has resulted in economic hardship for coastal communities throughout northern Norway which depend almost exclusively on commercial fishing for their livelihood.

In New England, the conservation of shared resources such as groundfish and herring would be better served by joint U.S./Canadian management. We propose that the Secretary of Commerce, through the Secretary of State, take stronger action to establish cooperation with the Government of Canada towards this end. At present, management efforts by both countries tend to undermine each others' effectiveness. In the absence of coordinated management of shared stocks the temptation will always be strong for either side to take more than a sustainable share of the catch.

As a step towards such cooperation, we also propose that the U.S. negotiate entry into the Northwest Atlantic Fisheries Organization (NAFO). This year, the European Economic Community (EEC) allocated itself thirteen times its NAFO quota of groundfish on the nose and tail of the Grand Banks. This shortsighted act illustrates the need for the U.S. to join the organization to become a force for better conservation of marine resources in the international waters of the Grand Banks, especially in light of U.S. fisheries interests in the area.

CONCLUSION

At this critical juncture, the U.S. must act expediently to address the issues facing the future viability of our marine fish stocks. The Magnuson Act brought control over the 200-mile EEZ and stimulated the Americanization of the fisheries. Now, Congress must take action to amend the FCMA to address problems caused by overcapacity, the lack of data to assist scientific assessment and management decisions, by-catch and discard catch, ineffective enforcement of regulations, and the loss of critical fish habitat.

Assertive action must also be taken on the international level to address the high seas driftnets crisis, unregulated groundfish trawling by foreign fleets in the Bering Sea "donut hole," and collapse in Northwest Atlantic groundfish stocks.

Clearly, an increased budget will be necessary for the National Marine Fisheries Service, the Regional Fishery Management Councils, and other agencies, to do an effective job. Additional moneys should be gained through the institution of industry user fees clearly directed into observer, management, and enforcement programs. The Federal Government and the fishing industry must share responsibility to ensure that financial resources are adequate to attain effective fisheries conservation and management.

The vitality of our nation's marine ecosystems, and all the diverse species that comprise them will only be maintained if we effectively conserve and manage fish stocks and protect their habitats. We urge Congress to give full consideration to our views and recommendations.

Thank you for the opportunity to submit our statement for the record.

STATEMENT OF THE NATIONAL WILDLIFE FEDERATION

The National Wildlife Federation (NWF) welcomes this opportunity to present our views on reauthorization of the Magnuson Fishery Conservation and Management Act (FCMA; P.L. 94-265).

The NWF is the nation's largest, not-for-profit, conservation-education organization with 5.1 million members and supporters throughout the U.S. and in 51 state- and territory-wide organizations which comprise about 4,500 local conservation organizations. The NWF consistently supports use of our nation's marine fisheries resources when that use is based on sound science and informed management.

Introduction

The NWF has a strong interest in the reauthorization of the FCMA. Since the mid-1970's, the NWF has supported the nation's right to assert jurisdiction over our marine fisheries resources 200 miles beyond our shores. We have supported reauthorization of the FCMA since its inception in 1976, participated in the deliberations of the Regional Fishery Management Councils established by the FCMA, sought adequate appropriations annually for the FCMA programs of the National Marine Fisheries Service (NMFS), and played a leadership role in supporting the habitat provisions of the 1986 reauthorization (P.L. 99-659). We support reauthorization of the FCMA and are committed to making it better.

The FCMA continues to be our best hope for conserving valuable marine fisheries resources. Enacted to improve conservation of marine fish stocks, especially to protect against overharvest of U.S. fisheries by foreign countries, FCMA "Americanized" the nation's coastal fisheries by increasing allocations to U.S. fisheries and decreasing those to foreign countries. To accomplish this, the FCMA established Regional Fishery Management Councils and provided them, and NMFS, broad authority to manage fish stocks in the Exclusive Economic Zone (EEZ), an area in excess of two million square miles.

The FCMA has done much to accomplish better conservation of marine fisheries resources. Most EEZ fisheries have now been successfully "Americanized," and overharvest of most stocks by foreign countries largely eliminated. The FCMA also has established and refined a mechanism, based on fisheries management plans (FMPs), to better manage many important marine and anadromous species throughout all or most of their ranges. The bounty produced from these fisheries is substantial. For example, 1986 landings of commercially caught fish represent $3.1 billion (dock side value), with an economic contribution to the nation's Gross National Product estimated at $17 billion. In addition, recreational anglers spend $13.5 billion annually in pursuit of marine fish, and Americans consume an estimated 15.4 pounds of fish per capita each year, much of it originating from our marine waters.

Unfortunately, all is not well with marine fisheries conservation in general, and the FCMA in particular. Despite years of experience with the FCMA, many key fish stocks are depressed, loss of habitat critical to fish production continues, and conflict between various user groups intensifies as the fisheries "pie" is reduced. We believe it is time to take a long, introspective look at the effectiveness of the FCMA 13 years since its passage. From our perspective, what the future holds is not at all reassuring. Despite success in achieving some key objectives, implementation of the FCMA still is lacking in four key areas which need to be addressed promptly.

Four areas of FCMA implementation where major deficiencies reside are in fish habitat conservation, overharvest of stocks by domestic fisheries, tuna management, and inadequate funding for NMFS to carry out its legal responsibilities under the FCMA. We discuss these areas in detail below and offer suggested changes, some of which we have promoted in the past, and some new.

The FCMA Should Place Greater Emphasis on Fish Habitat Conservation

Marine fisheries resources face substantial threats from habitat degradation. Recent reports from the Congressional Office of Technology Assessment (Wastes In The Marine Environment 1987), the House Subcommittee on Fisheries and Wildlife Conservation and the Environment (Coastal Waters In Jeopardy:Reversing The Decline and Protecting America's Coastal Resources: 1988), and various NMFS reports provide abundant evidence of these threats, in the form of degraded coastal and marine water quality and an ever-continuing loss of wetlands.

Loss of marine fisheries goes hand in hand with the loss of estuarine and coastal habitats. FCMA-managed anadromous and estuarine-dependent species, such as the salmonids, shrimp, and red drum are particularly vulnerable to habitat degradation. For example, the NMFS estimates that Columbia River salmon and steelhead stocks have been reduced 75-84% from historic levels due to dams and loss of spawning habitat. Louisiana is losing an estimated 60 square miles of wetlands each year, seriously impacting the fisheries of this state which produces 28% of the total U.S. landings (by weight).

President Bush has joined many commercial and recreational fisheries and conservation groups in calling for greatly improved coastal and marine environmental quality and to achieve a "no net loss of wetlands" goal. The NWF endorses the President's support for these goals and believes the FCMA could provide an important vehicle for their accomplishment. To this end, we suggest Congressional consideration of amending the "Findings, Purposes, and Policy" (Section 2: FCMA) to reflect the seriousness of habitat loss for fish production and the need to protect and conserve fish habitat. An adaptation of President Bush's "no net loss" wetlands policy goal, for example, should be modified to a "no net loss of fish habitat" goal for the "Purposes" section. This goal already has been included in the Council's habitat policies (described below). We urge Congress to consider incorporation of this concept into the "Findings, Purposes, and Policy" Section.

To make the FCMA a more powerful tool in conserving fish habitats, the NWF recommends the following specific changes.

1. Congress should direct the Councils to use their FCMA habitat conservation authorities more vigorously.

In 1986, habitat conservation provisions were incorporated into the FCMA, essentially codifying the NMFS Habitat Conservation Policy of 1983. These provisions required the Councils to incorporate "readily available" (P.L. 99-659) habitat information in all fishery management plans, and with guidance from NMFS, assess the effect that changes in habitat would have on FCMA-managed fisheries. Further, the 1986 amendments authorized the Councils to recommend conservation measures for federal and state activities adversely affecting fishery resources for which the Councils have management responsibility.

Thus, in 1986, with guidance from NMFS, the Councils began to implement these provisions. An important feature of this effort was the establishment of a habitat conservation policy for each of the Councils, to strengthen their ability to address habitat issues. The guiding principle of each Council's policy is no net habitat loss, i.e., no net loss of a given habitat's ability to produce fish and their food base.

The Councils have made much progress in implementing the habitat provisions over the past three years. For example, all eight Councils have adopted a habitat policy, and have established protocols for determining when and how to use their habitat conservation authorities. Other examples illustrating the Council's use of this important authority include the following:

- In 1988 the Gulf of Mexico Council held a public hearing to consider the biological and economic effects on shrimp and red drum fisheries expected from a Corps of Engineers project to widen and deepen the Houston Ship Channel. The Council used this public comment to formulate its views on the project, citing its FCMA habitat conservation authority in doing so. The Gulf Council now regularly monitors, and comments on, federal and state activities affecting fish habitats.

- In 1988 the New England and Mid-Atlantic Councils jointly opposed the continuation of sewage sludge dumping at the 106-mile deepwater dumpsite, located off the coast of New York and New Jersey. These comments were central to securing Congressional action for passage of Ocean Dumping legislation (P.L. 100-688) in the 100th Congress.

• The Pacific Council's salmon fishery management plan includes a habitat section which should serve as a model. The plan identifies specific habitat objectives and includes an appendix describing present habitat conditions, the economic value of the fishery, and effects of ongoing activities on fishery production. Examples of the plan's habitat objectives include: to assure Pacific salmon receive equal treatment with other purposes of water and land resource development, and to facilitate vigorous implementation of federal and state programs to restore salmon stocks.

Despite this encouraging evidence that implementation is occurring, the NWF believes the Councils can, and should, use their existing FCMA habitat conservation authorities more vigorously. The two major obstacles preventing more effective use of these authorities are (1) lack of Council staff with technical skills in the habitat area, and (2) low interest by the leadership of some Councils to emphasize habitat conservation. Therefore, as a preliminary step in addressing these problems we urge Congress to provide funding for, and direct the Councils to hire, at least one Full Time Equivalent (FTE) to work exclusively on fish habitat issues. We envision this staff, possessing expertise in fishery biology and habitat relationships, working to develop habitat provisions of fishery management plans and Council comments on development activities affecting FCMA-managed fish habitats. Second, Congress should encourage the Councils to be more active in habitat conservation. We believe in-house expertise and heightened priority would yield substantial habitat conservation benefits to FCMA-managed species.

2. Congress should amend FCMA authorizing the Secretary of Commerce (NMFS) to play a greater role in mitigating federal activities which have a significant adverse impact on FCMA-managed fish stocks.

The NWF passed a resolution in 1985 (attached) calling for mandatory mitigation of adverse impacts of federal activities on important habitats of FCMA-managed species. This resolution was responsible for NWF's subsequent leadership role in advocating adoption of this important amendment to the FCMA. Although our "mitigation" amendment was not passed during the 1986 reauthorization, NWF continues to believe it necessary for effective federal marine fisheries management. Thus, we urge Congress to consider it fully again during the current reauthorization.

To some, this type of action is considered drastic. Allowing the Secretary of Commerce to set mitigating conditions for Corps projects which adversely affect FCMA-managed species, for example, might be considered too large an obstacle to the necessary work of the Corps. However, if we are serious about stemming the further erosion of our fish-producing habitat base, then steps must be taken now to fully compensate for the loss of this base. Our amendment recognizes that the nation's marine fisheries resources are of extraordinary social and economic significance, and that these resources are threatened by habitat destruction, often from federally authorized, funded, or permitted activities. Therefore, all federal agencies conducting activities adversely affecting FCMA-managed fisheries should have the affirmative duty to evaluate, and mitigate, the effects of their actions on these fisheries. A precedent for this proactive model was included in the 1986 amendments to the Federal Power Act (P.L.99-495: Electric Consumers Protection Act). In this statute NMFS was given a strong role in establishing mitigation conditions on hydropower licenses granted by the Federal Energy Regulatory Commission. Within the next few weeks we will submit proposed language for this amendment to the Committee for your consideration.

Congress Should Direct the Councils and NMFS to Use Existing Authorities To Curtail Overharvest and Restore Depressed FCMA-Managed Stocks

We citizens of the U.S. have always assumed that our fish stocks are inexhaustible. This has led to a tradition of overharvest of numerous important stocks. Collapse of the Pacific sardine fishery, extinction of the blue pike from Lake Erie, and the precipitous decline of Atlantic striped bass are testaments to our inability to provide adequate controls on fish harvest. In an effort to prevent overharvest, the FCMA's National Standard For Fishery Conservation and Management states:

> Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. (Section 301, FCMA):

Implementation of this Section of the FCMA by the Councils and NMFS has been dominated by attempts to regulate harvest levels on fisheries. Current estimates of high levels of abundance for certain species, such as Atlantic mackerel, sea scallops and Alaskan salmon stocks, demonstrate that --in certain instances-- this system can operate effectively.

However, NWF continues to be concerned with many of the FCMA-managed stocks which are at depressed levels due, at least in part, to overharvest. Depressed stocks can be cited for virtually every fishery management region, according to a recent survey of FCMA-managed stocks conducted by the Councils and NMFS ("State of the Fisheries" Memorandum from James W. Brennan, Assistant Administrator for Fisheries, NMFS, March 17, 1989). The following are prominent examples of but a few of the stocks that have been depressed by overharvest:

- New England groundfish biomass has declined 65% from 1977 to 1987. The staples of this fishery, cod, haddock, and yellowtail flounder, are at record low levels of abundance.

- Atlantic swordfish stocks have declined steadily over the past 10 years, especially in older age classes.

- In the Gulf of Mexico, the red drum fishery in the EEZ was closed on January 1, 1988 because of overharvest. Also, extremely valuable white and pink shrimp fisheries are now showing signs of overharvest.

The "State of the Fisheries" confirms what many observers have suspected for a long time: the state of the nation's fisheries is not good, and overharvest is a major reason why.

Although the issue of overharvest is extremely complex, sometimes confounded by research data inadequate to use in establishing good harvest regulations and insufficient law enforcement, excessive fishing effort (excessive harvest capacity) appears to be the principle cause of overharvest. Simply put, it is too many boats, fishing too long, for too few fish. The "State of the Fisheries" plainly documents this. For example, the number of days fished by the New England groundfish fleet increased 73% from 1976 to 1986 on stocks which have been declining in abundance. Lobster, shrimp, spiny lobster, Pacific coast groundfish, and Alaskan groundfish are all fisheries suffering from excessive fishing effort.

The NWF offers two suggestions for addressing the significant problem of overharvest. First, Congress should direct the Councils and the NMFS to better separate conservation decisions from allocation decisions and place a premium on protecting and restoring fish stocks.

Excessive harvest capacity on a fishery generally results in conservation decisions (allowable biological catch) becoming intertwined with allocation decisions (who gets how much). This oftentimes leads to establishing harvest quotas at levels harmful to the health of a stock simply because of the need to satisfy the excessive harvest capacity. In the words of the NOAA Fishery Management Study of 1986:

> ...the conservation decision, made in the form of an acceptable biological catch (ABC) determination, should be made before it is decided who the users will be. When the two processes are combined in one decision, the pressures are always to add more effort to serve the interests of more users. NOAA Fishery Management Study 1986: Executive Summary.

The NWF believes that, in order to alleviate the problem of overharvest on FCMA-managed fisheries stocks, greater effort must be made to separate these decisions as well as to place greater emphasis on conservation decisions rather than allocation decisions. After all, allocation is academic if the resource is gone.

NMFS and the Councils appear to be making some progress on this subject as evidenced by the recent publication of a proposed rule to establish a mechanism to aid the Councils in preventing overharvest (Federal Register 53(251):53031-53036). Originating in the recommendations of the 1986 study, the rule proposes to establish a measurable definition of overharvest for each fish stock, or stock complex, affected by a Fishery Management Plan, and to periodically evaluate the effectiveness of the Plans in achieving stated objectives. Congress should monitor implementation of this rule to ensure it is used effectively.

Second, Congress should encourage the Councils and NMFS to adopt policies providing better control of fishing effort.

The key component of the excessive fishing effort problem is the current policy, which allows virtually unlimited access to the FCMA-managed fisheries. If the nation is to solve the problem of overharvest, the Councils and the NMFS must adopt management options which will allow control of access to the fisheries. Commonly dubbed "limited entry," this concept has long been anathema to many fishery groups. Recently, however, continued failure to address the problem of overharvest has led some harvesters --previously opposed to limited access-- to reconsider access limitations. Currently, limited access is being studied for the following fisheries: New England groundfish, sea scallops, Pacific groundfish, and Alaskan groundfish. Congress should encourage this approach for other overharvested stocks, and should support use of the best alternatives.

Funding For The Implementation of FCMA Is Inadequate

Inadequate funding to implement the FCMA effectively is one of the major obstacles for achieving the objectives of this important legislation. For the past eight years, the Administration has recommended severe cuts in those NMFS programs which implement the FCMA, including research, habitat conservation, law enforcement, and the Councils' management programs. This Committee, Congress, NWF, and other supporters of NMFS' programs have had to work hard just to maintain base funding levels for the agency. In spite of a static funding base, NMFS has been given increased responsibilities as a result of the recent reauthorization of the Endangered Species Act, the Marine Mammal Protection Act, and other pieces of legislation. NMFS and the Councils have been asked to do more with less. It is not working.

Although it is clear that more funding for NMFS is needed, eight years of inadequate funding, and added responsibilities, has obscured how much more money is needed for the NMFS. Therefore, NWF urges Congress to conduct oversight hearings on, or commission an objective study of, NMFS funding needs. An assessment of user fee alternatives should be included in this evaluation.

Tuna Management

The NWF remains concerned about the failure of international tuna management arrangements to protect tuna from overharvest and to protect FCMA-managed species from harmful levels of bycatch from tuna fishing. The decline of Atlantic bluefin tuna is especially worrisome, with western Atlantic stock populations continuing a long decline that first began in the early 1970's.

The NWF joins five Regional Fishery Management Councils in calling for the repeal of Section 102 of the FCMA, which excludes tunas from FCMA-management. If tuna stocks are to be protected, the U.S. must act unilaterally to conserve this resource, as well as other FCMA-managed species adversely affected by tuna fisheries. The Council fishery management plan system, in conjunction with continued U.S. participation in the International Convention for the Conservation of Tunas, and other international tuna management bodies, appears to be the best hope for the long-term conservation of tuna.

Conclusion

Much of the debate on FCMA issues for the past 13 years has ignored conservation of fish stocks and the habitats on which they depend. The 1989 reauthorization debate must break this tradition if we are to make progress in addressing the keystone issues of habitat degradation and overharvest confronting the Nation's FCMA-managed fisheries. Perhaps the most compelling illustration of this urgency comes with the dramatic declines in the New England groundfish fishery, a fishery as old as the nation itself. It is against the backdrop of this example that the NWF urges Congress to give our recommendations full consideration.

Thank you for the opportunity to provide these comments.

TESTIMONY OF THE AMERICAN FISHERIES SOCIETY ON THE RE-AUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Prepared By

The Marine Fisheries Section
American Fisheries Society

The American Fisheries Society was founded in 1870 to promote the conservation, development and wise utilization of fisheries. The Society's membership consists of over 7,000 fishery scientists, fishery managers and others from around the world who are interested in the well-being of the fisheries. The Society is pleased to have the opportunity to present its views on the performance of the Magnuson Fishery Conservation and Management Act.

The Society has become increasingly concerned about the effectiveness of the Magnuson Act in conserving and promoting the wise use of our nation's marine fishery resources. In 1986, the Society adopted the report of its *ad hoc* Federal Fisheries Responsibilities Committee. This Committee was chaired by Society member Dr. John P. Harville, the former Executive Director of the Pacific Marine Fisheries Commission, and its report is thus called the Harville Report. The Harville Report addresses broad issues but also specifically addresses issues related directly to the performance of the Magnuson Act. A copy of the Harville Report is attached. At the Society's Annual Meeting in 1987, the Marine Fisheries Section sponsored a management audit, a symposium that reviewed the performance of the Magnuson Act for representative fisheries from around the U.S. and contrasted it with the management of Canadian fisheries. Members of the Society also participated in the National Oceanic and Atmospheric Administration's (NOAA) Fishery Management Study and in a special NOAA-sponsored review of king mackerel management in the Southeast. The Society's comments are based upon these studies and the direct experience of its members. Also attached is a related resolution that calls for better ecosystem management that was approved by the Society's membership in September of 1988.

It appears to the Society that a majority, if not virtually all, of the important finfish stocks managed under the Magnuson Act off the northeastern, southeastern, and Gulf of Mexico coasts of the U.S. are overfished or are clearly on the way to that condition. The "State of the U.S. Fisheries" report prepared by NOAA for these hearings confirms this. The Society is concerned that the Pacific and Bering Sea fisheries will ultimately suffer the same depletion if the performance of management under the Magnuson Act is not vastly improved.

At the beginning of management under the Magnuson Act, overfished stocks off the Northeast showed signs of recovery as the foreign fishing effort was reduced. This success was short-lived as the foreign fishing effort was soon replaced by U.S. vessels and the recovery was reversed. Off the Southeast and Gulf of Mexico coasts where little foreign fishing had occurred except for tunas and some sharks and grouper, the U.S. fishing effort continued to mount virtually unabated until the fish stocks there became overfished. Of all the overfished Atlantic and Gulf of Mexico fish stocks few, possibly the mackerels (Atlantic, Gulf Group king and Spanish), have shown signs of recovery from overfishing due to sufficiently stringent management measures or to the redirection of fishing effort. However, even the management measures for the king and Spanish mackerels were enacted long after the stocks had become overfished.

The Pacific and Bering Sea fisheries have, indeed, fared much better. The Society believes that this is due for the most part to a combination of factors that are not necessarily related to the Magnuson Act, i.e. fewer political entities (states), a history prior to the Magnuson Act of better science-based management within the states, a better historic data base on the important fish stocks of the region and some very large foreign fisheries to balance the needs of conservation while accommodating the growth of the U.S. fisheries. The Society's concern for the Pacific and Bering Sea fisheries is based on the conversion of foreign to U.S. fisheries having run its course and on the East Coast experience of what happened then.

The status of our fisheries relies on the stewardship over their exploitation and the habit or ecosystem on which they depend. The testimony of the Society largely concerns the stewardship of exploitation, the chief focus of the Magnuson Act. However, the Society must point out that there is a serious loss in both the quality and quantity of the nation's inshore and nearshore habitat upon which a great many of our marine fish stocks depend for at least part of their life history. The Society believes that Congress should comprehensively address the issue of habitat loss and provide greater authority for its prevention, perhaps even through re-authorization of the Magnuson Act.

The Society believes that the major problems with the management of the fisheries under the Magnuson Act may be traced to the following:

(1) A lack from the very outset of leadership by the responsible federal agency which led to consistent overfishing.
(2) A lack of Congressional and Executive Branch understanding of the need for or a commitment to provide the fiscal resources necessary to carry out the requisite responsibilities.
(3) A lack of trusteeship, i.e. short-term economic and allocation considerations have taken precedence over conservation and longer-term considerations.
(4) An inefficient and hopelessly long and complex process to develop and modify fishery management plans and a failure to allow, much less promote, certain efficient management mechanisms.

The Society makes seventeen recommendations to assist in alleviating these problems.

LEADERSHIP AND OVERFISHING

In part, the leadership problem has resulted from the fragmented federal responsibility for fishery management. This was compounded at the outset, however, since NOAA's National Marine Fisheries Service (NMFS) elected to apply a light hand in the development of domestic federal fishery management and to allow each Fishery Management Council to develop, as it were, its own personality. At the time this may have seemed like the politic thing to do since the regional council system was an experiment in user self-regulation but in the view of the Society it has proven out to have been a serious mistake. There were a few notable exceptions to a completely hands off process, e.g. the briefing for newly appointed members of three Councils conducted by the NMFS Southeast Regional Director, but by and large NMFS' approach resulted in substantively different interpretations of the Magnuson Act and in many Fishery Management Plans where it is impossible to judge their success or failure. These developments have proved to be politically difficult to bridle through today even though the problem was fully recognized by the NOAA Administrator three to four years ago and documented in the NOAA Fishery Management Study.

A prime example of a serious failure of leadership is manifested in the evolution of the NMFS definition of overfishing for use as a guideline with the first national standard. First, NMFS differentiated between growth overfishing and recruitment overfishing, stated that only the latter was overfishing under the Magnuson Act and incorrectly defined recruitment overfishing. Then NMFS published the following definition:

> *"Overfishing is a level of fishing mortality that jeopardizes the capacity of a stock(s) to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions."*

This definition does not recognize established convention, the commonly accepted definition of overfishing that existed at the time the Magnuson Act was written, i.e. a level of fishing mortality that results in less long term yield or economic rent than does some lower fishing mortality level. It does not recognize the emerging or even existing knowledge about interspecies or interstock dependencies that may, as exceptions to the convention, require higher or lower populations to produce long term optimum benefits. It does not even recognize the simple sense of being off target (i.e. away from optimum yield) on the side of excessive fishing mortality except at the very extreme.

NMFS simply defined overfishing in the sense of a threatened or endangered species. This gave the Councils far too much latitude and effectively eliminated the ability of the first national standard to provide an effective threshold against depletion. Without that threshold, recovering resource productivity is feasible only over the long term and only in the face of chance under very stringent and costly management measures and at considerable economic and social dislocation of the fishermen and related industries.

Fishery management in an ecological context dictates that some species may be fished harder than the conventional definition of overfishing would allow in order to achieve indirectly greater long term benefits. An example of this could be the Bering Sea cod and king crab predator-prey relationship that may dictate a lower cod population in order to favor a greater human harvest of the more valuable king crab resource. Similarly, multiple stocks of returning salmon may be inextricably caught in the same fishery. Nevertheless, these cases should be treated as exceptions and must require an extraordinary understanding of the interspecies or interstock relationship in order to deviate from convention to lower population levels.

Clearly, the goal of the Magnuson Act is not the prevention of overfishing but is the optimum yield which provides the greatest overall benefits to the nation. However, the long term health and abundance of the fishery resources must be a paramount concern of management and this concern is met by stringently preventing overfishing.

1. The Society recommends that the Magnuson Act clearly establish the policy that the Secretary of Commerce must provide the leadership in the fishery management process established in the Magnuson Act and through the National Marine Fisheries Service exercise better stewardship for the long term benefit of the public's marine fishery resources.

2. The Society also recommends that an independent national board or commission be established to oversee the Department's implementation of the Magnuson Act. The members of this board should be presidential appointments,

be subject to Senate confirmation, be highly knowledgeable about marine fishery science and management, and must have no financial ties to the uses or users of those resources.

3. The Society further recommends that the established convention, with an exception for interspecies or interstock dependencies, serve as the definition of overfishing, that it be defined in the Magnuson Act with stringent requirements for demonstrating the interspecies or interstock exception, that overfishing be proscribed, that recovery from overfishing be required, and that the Magnuson Act contain a fish stock threshold below which all fishing shall cease until a recovery to above that level occurs.

FISCAL RESOURCES

Effective fishery management requires that the status of a fish stock be determined and the effects of regulations to be predicted within a degree of precision and accuracy that allows for an informed decision by the Councils and permits ready acceptance by the public. The effect of inaccuracy is generally obvious. The effect of imprecision is less obvious but it results in either insufficient or no action on the one hand or excessively stringent action on the other. More insidious is that unless there is public confidence that the action is necessary and sufficient, the ensuing enforcement burden is tremendous. Effective fishery management also requires that the fishery and fish stock be monitored within an acceptable level of accuracy and precision to determine empirically the effects, if any, of management.

The state of the art of fish stock assessment minimally requires data on the catch level and its age and sex composition from each stock, the amount of fishing effort and its temporal and spatial parameters for each significant gear type and some fishery-independent data to minimize fishery-induced biases. The fishery-independent data, usually obtained by statistically designed research vessel surveys, assume a far greater importance if the fishery is complex or catch and fishing effort data are distributed in geographically dispersed landing sites. As a fishery becomes regulated, fishery-independent data become essential to verifying the efficacy of the cheaper fishery-dependent assessments or even to supplant them if necessary.

The Society believes that overall the ability of NMFS to conduct minimally adequate stock assessments for important fish stocks and to monitor the effects of management is precariously poor. The capability of NMFS in the Southeast region, while substantially improved since the Magnuson Act's passage, has never reached minimally acceptable standards and that of the Western and Northeast regions, perhaps once adequate, has clearly eroded over the past decade.

The Society notes that there is a clear relationship between: (1) the lack of stock assessment capability and public acrimony over the need for management and its provisions, (2) good stock assessment capability and public compliance with management actions, and (3) good stock assessment capability and the level of catch that may be safely allowed while at the same time preventing overfishing. The Society believes that the cost of stock assessment has not been properly evaluated against these factors nor against the value of non-seafood uses where such is important nor against long term returns as the proper evaluation of public resources requires.

Predicting the effects of management and monitoring them is not only a stock assessment problem. The economic and sociological effects on the people and the industries that are directly involved in catching and indirectly involved in the support services and handling of the fish and fish products need to be predicted and monitored with sufficient precision and accuracy as well. While some concerted efforts have been made, this whole area has never been developed to any degree of adequacy within the NMFS. Unfortunately, what little has been accomplished has largely been at the expense of the basic fish stock and fishery data, furthering their erosion.

Finally, for the management efforts to be successful there needs to be adequate willing compliance. Unfortunately, in order to achieve this a sufficient level of enforcement is needed so that those who comply willingly are comfortable that those who do not will be apprehended and, if so, then will suffer the appropriate consequences. Otherwise, the entire effort will break down and become wasted. Enforcement includes the Coast Guard for offshore fisheries and NMFS enforcement agents for nearshore and landside efforts, especially in regions where there is a predominance of recreational fishing. The Society believes that there is an insufficient level of enforcement to deter even the average scofflaw and an insufficient level of penalties to deter major purposeful violations.

4. The Society recommends that the fishery management process implementing the Magnuson Act be restructured so that a greater share of the available fiscal and personnel resources can be allocated to the information and compliance functions.

5. The Society further recommends that the NMFS budget be augmented to provide adequate stock assessments, socio-economic evaluations, monitoring and compliance for important fish stocks in all regions of the country.

TRUSTEESHIP

Congress established the membership of federal fishery management councils as an experiment that may be described to a very large degree as user self-regulation. The Commerce Department has thoroughly emphasized this by formally selecting people as Council members to represent specific user interests. Can people who clearly *represent* specific economic interests perform adequately as trustees of the public's resource that they use? The Society believes that on balance the answer is no.

Marine fisheries are complex and considerable knowledge and expertise is required to understand them, their problems and the solutions to their problems. Certainly, people who participate in fisheries in various ways have considerable knowledge about at least part of the fisheries and obtaining this knowledge by appointing them to the fishery management planning bodies, the Councils, is a means to do so. Of course, this assumes that the knowledge will come into play in a unbiased fashion for the public good, i.e. the policies laid out by Congress in the Magnuson Act, and will not serve strictly the special interest of the individual nor the interest group that the individual was chosen to represent. In theory, this seems like a good practice. After all shouldn't the dependent individuals and businesses be interested in their long term survival? And does not fishing have a strong parent-to-child history that would ensure this long term perspective? Unfortunately, from the record of overfishing it seems to the Society that the answer to these questions is no.

Furthermore, this approach also assumes that if the experiment were to go awry then the responsible agency could and would provide the leadership necessary to prevent or overcome the problem. Unfortunately, this has not happened.

The Society believes that the present state of the U.S. finfisheries demonstrates that Congressional and agency faith in the altruism of the marine fisheries users of today has been tragically misplaced. The Magnuson Act proscribes overfishing, yet it has occurred with alarming frequency. The history of the depletion of king mackerel and the delay in implementing adequate recovery regulations is a clear case in point that was documented in the previously-mentioned NOAA report. Public resource trustees are needed in place of user group representatives. On balance, the Society believes that trusteeship requires for most people that there be a divorce from financial conflicts of interest in the stewardship of the public's resource. Finally, the Society believes that trusteeship implies public service for the public good and not the GS-18 salary for services rendered that Council members are currently paid.

The Magnuson Act wisely prescribes that action should be taken on the basis of the best scientific information available. The implication here is that management should not wait until everything is precisely known. Congress accurately understood that to so wait is foolhardy since no amount of expenditures will meet the precisely-known standard. This, unfortunately, has been lost on many of the Councils and the agency. The Society believes there is a need for clear congressional guidance to steer for the long term when confronted with uncertainty in the status of the resource and in uncertainty in the outcome of management.

Fishery management must be based on the best scientific information available as required in the Magnuson Act. The data upon which this information is based must be subject to sufficient public scrutiny. Current requirements for fishery data confidentiality too frequently frustrate and even preclude examination of this basic data by those responsible for making management recommendations to the Secretary of Commerce. If possible, data supplied by individual businesses should be kept confidential to assist their efficacy and to reduce the opportunity for impropriety. However, where such fishery data are the only data available or where only two firms are involved the Society believes that the public interest in the private use of a public resource must take precedent and the data must be made available for scrutiny where necessary. It is noted at this point that if Council members had no financial conflicts of interest, then problems of impropriety and efficacy would be diminished or removed altogether.

The issue of fishery catch allocation all too frequently impedes trusteeship. First, virtually all forms of management result in some allocation, intended or not. Second, needed conservation sometimes favors or appears to favor allocation to one user group, thereby creating a political reaction against the management measures. And, third, conservation is frequently the easiest trade-off to make in order to reach allocation agreements. The Society believes that conservation and allocation issues should be separated to the degree possible.

6. The Society recommends that the Magnuson Act prescribe that the Council members shall be trustees of the public's resource and not representatives of special user groups, that no member shall have any immediate or recurring financial conflict of interest with marine fisheries, that no member shall be or have been an employee or paid representative of a user group association, and that each member be highly knowledgeable about marine fisheries science and management.

7. The Society recommends that user groups provide input through standing advisory panels and public testimony.

8. The Society recommends that Council members be paid a nominal honorarium, perhaps $100-150 per day, for their public service rather than a salary at the GS-18 rate.

9. The Society recommends that the Magnuson Act prescribe managing to obtain larger existing fish stocks in the presence of uncertainty about the stock's status or the efficacy of management rather than larger short term catches.

10. The Society recommends that the national standard on fairness and equitability for managing fish stocks that coastally migrate extensively among or between states require that sacrifices and returns be provided equally for all U.S. citizens and residents regardless of the state in which they reside.

11. The Society recommends that confidential data be made available to those making the fishery management decisions as they deem it necessary and in the public interest.

12. The Society recommends that to the greatest degree possible, that allocation decisions be conducted separately from the conservation decisions.

EFFICIENCY

The state of the art of fishery management is still largely an empirical process. Fishery science's ability to understand and to predict the whims of Mother Nature is such that careful monitoring and nearly constant course corrections are inescapable. However, the management plan development and revision processes are just too ponderous to react appropriately. Too many people and too many levels are involved and too many procedural regulations or administrative orders impede adequate progress.

It is a well-known human phenomenon that the speed at which a committee does its work decreases at an increasing rate as the number of members goes up. The Society believes that the Councils are too large and that the Secretary has been too remiss in developing adequate Secretarial plans in the face of slow Council action -- the southeastern mackerels, red drum and east coast swordfish are prime examples of the latter. Regional agency reviews, NMFS reviews, NOAA reviews, Commerce reviews, OMB reviews and even White House reviews bog things down and result in several changes of direction during the process. While the Society clearly supports doing the right thing and understands that all these reviews are designed to produce the right thing, the uncertainty associated with fishery management calls for an empirical process and the various and lengthy reviews simply impede this.

Excessive capitalization in the seafood industry's harvesting sector is the inevitable result of open access management. Not only does this result in an economically inefficient use of capital in the nation's economy but it supplies great impetus towards overfishing and great inertia against properly correcting the problem. Controlling excess amounts of fishing effort through means that do not address the open access problem is complex, costly, inefficient and, in too many cases, ineffective. The ability to control fishing effort through limited access systems should not only be allowed but should be promoted in the Magnuson Act.

The present geographical scope of federal management is not only inefficient and sometimes ineffective but it has an insidious and negative effect on the conservation efforts of some states. The Society believes that fish stocks must be managed throughout their range. However, despite preemption ability most federal plans for stocks predominantly in federal waters or shared significantly by more than one state do not manage into state waters. This has, for example, created serious difficulties for the management of Spanish and king mackerel in the Southeast. On the other side of the coin, the Magnuson Act is interpreted as precluding states from enforcing their regulations outside the territorial sea in the absence of federal management against any entity but their own registered vessels. This raises fairness considerations but more importantly it unnecessarily exposes clearly state resources like Florida's snook or tarpon to unbridled exploitation. It also unnecessarily accrues federal management costs simply for the sake of regulation enforceability -- examples of this are Florida spiny lobster, Florida stone crab and Florida and Texas shrimp fisheries. There is also the unfortunate and inappropriate use of federal plans where species are simply listed and not managed, thereby effectively precluding dilligent states from pursuing needed conservation measures for those species.

13. The Society recommends that the size of the Councils be reviewed with an eye toward reducing the membership and to evaluate whether the federal agency itself could not perform those functions as well, especially if a national board or commission were created.

14. The Society recommends that adequate time limits be placed on the processes of plan and regulation development and revision.

15. The Society recommends that fishery management plans be exempted from the provisions of the National Environmental Policy Act, since the plans are inherently in the spirit of NEPA, and be exempted from other forms of unnecessary or duplicative paperwork.

16. The Society recommends that the Magnuson Act promote the use of economic-based controls and forms of privatization, like limited entry, stock certificates and individually allocated quotas, when shown to promote conservation and wise use.

17. The Society recommends that the scope of federal management be adjusted (a) to include those fish stocks that are truly predominantly in the FCZ or extensively shared by more than one state *wherever they may be found,* (b) to include any fish stocks not meeting provision (a) and that are not being managed by the states as *biologically* adequate as provided for by the Magnuson Act, (c) so that federal regulations do not take precedence over the state's if in fact the state's are more stringent biologically and (d) so that it provides for state authority over all U.S.-registered vessels adjacent to but beyond the 3 (or 9) nautical mile territorial sea for those fish stocks not subject to federal management.

Finally, the Society has reviewed the fourteen recommendations made on May 2, 1989, by the Fishery Management Council Chairs and supports all but two of the recommendations. Council Chairs' recommendation number 5 on obligatory Council seats conflicts to some degree with the Society's trusteeship recommendations regarding Council membership. Council Chairs' recommendation number 2 to delete completely the exemption for tuna conflicts to some degree with the Society's position on trusteeship. While this latter issue will be addressed by Congress separately, it is the view of the Society that fish stocks are best managed throughout their range by an entity with the legal competence to do so. The Society sees no conflict with this view, however, in a country exercising unilateral jurisdiction over its own residents wherever they may fish.

The Society will be pleased to work with Congress to provide further any needed information.

May 12, 1989

The Honorable Bob Packwood
United States Senate
259 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood:

It has now been twelve years since passage of the MFCMA, and the foreign fishing fleets which in the mid-1970s dominated the high seas fishing scene off New England, the mid-Atlantic, California, Oregon, Washington, and Alaska have ceased to exist and have been replaced by U.S. counterparts.

We clearly recognize that various problems remain and new problems have arisen regarding management of the fishery resources and the ocean environment adjacent to our country. We, however, feel that the majority of the conservation and allocation problems now confronting fisheries managers in the U.S. do not reflect serious difficulties in the Act, but can be traced to the failure of NOAA to vigorously pursue the Act's intent and to exercise its role as the ultimate steward of our fisheries resources.

During the past twelve years, operating under the laws of the MFCMA and within the business environment which this Act has created, the American fishing industry off Alaska has flourished. Crab, herring, and bottomfish have been completely "Americanized." More than 2.0 million metric tons of groundfish resources which were not harvested by Americans in 1976 are now fully harvested and primarily processed by Americans. The fisheries industries of the region are now worth over $4.5 billion, more than three-fold the value of the fisheries in 1976.

The MFCMA established the 3-200-mile EEZ as a federal zone to be managed in the best interests of the nation as a whole, under a set of national standards which were intended and written to prevent both over-fishing and discrimination between states or residents of states. The fisheries development history which followed is well known. The rules were clear and the risks great. Investments were made for both at-sea and shoreside operations.

Senator Packwood, we are truly alarmed at the very real prospect that special interest groups, who for the most part opposed the original Act and who have made minimal or no investments in developing the fisheries of the EEZ off Alaska, are likely to propose amendments to substantially alter the MFCMA during the reauthorization process. Strong pleas will likely be heard to scrap certain aspects of the national standards and provide priority access to coastal communities and/or shore-side processors. There is strong talk of extensive first priority fishery allocations to Alaska coastal communities at the expense of coastal communities of Washington, Oregon, and northern California, which have invested nearly a billion dollars to develop a competitive U.S. high seas fishing industry--more than $5 for every $1 invested by Alaska communities.

If the Act is amended to provide for priority allocations to shoreside versus at-sea processors, the existing business environment will be changed drastically, resulting in displacement of many Washington- and Oregon-based operations now having equal access to the federal zone. The existing industry has developed, based upon pure economics of fisheries. We are competitive in the international market place. Special access rights which are likely to be proposed by Alaskan interests will favor the economically inefficient. Loss of existing and economically viable operations will destroy the present competitive position of the Pacific Northwest industry and the quality of the products being marketed, and will de-Americanize our fisheries and once again open the door to foreign operations.

We are convinced that the efforts by Senator Magnuson, Senator Hollings, Senator Stevens, and others in the development and passage of the Fisheries Conservation and Management Act of 1976 was well worthwhile and reflects well on the wisdom and leaders of our Congress. The Act is, of course, not perfect, but many of the current criticisms leveled at the MFCMA could be resolved if Congress moved to stiffen the resolve of NOAA as the Act's caretaker and if more stringent procedures and criteria were established for resource allocation.

From our perspective, the Act's national standards, which are designed to prevent over-fishing, as well as discrimination between citizens of the various states, and which promote an efficient competitive industry, must be retained.

If these components of the Act are eroded, we are convinced that resource allocation will be politically driven by the desires of special interests seeking to make economic gains at the expense of those who have invested in and built the current industry. If differential domestic allocations were to occur, depending on the processing mode, we are truly fearful that massive bankruptcy of the existing Pacific Northwest high seas fleet will follow. We ask that the original intent of the MFCMA be preserved and that all attempts to erode the MFCMA into a political free-for-all by special interest groups be soundly defeated.

In concluding, we would like to note that with the exception of AFTA, none of us was even aware of the hearing until early this week, and none of the signators to this letter was asked about the selection of witnesses or to prepare written testimony. Considering the importance of the MFCMA to the Pacific Northwest fishing industry, this all seems rather surprising.

Sincerely,

Konrad S. [illegible] Highliners Assoc.

R. Barry [illegible] Midwater Trawlers Cooperative

Edward D. [illegible] Alaska Factory Trawlers Ass'n

Joseph C [illegible] Alaska Trawl Fisheries, Inc.

Aleutian Spray Fish. Henry [illegible]

Gerry J Baker Arctic Alaska Fisheries Corp.

Rudy A Petersen	North Pacific Fishing, Inc
John [illegible]	Marine Resources Company International
Ted A. Smith	North Pacific Fishing Vessel Owners' Ass
Lionel D. Bohannan	American High Seas Fisheries A.
Stanley Hovik	Arctic Storm Inc -
Dennis Petersen	Ocean Spray Fisheries Inc.
Stanley Simonsen	Golden Age Fisheries

STATEMENT
OF THE
JAPAN SQUID DRIFTNET FISHERY ASSOCIATION
CONCERNING
HIGH SEAS DRIFTNET FISHING

The Japan Squid Driftnet Fishery Association represents Japanese fishermen who are engaged in gillnet fisheries on the high seas for squid. As the representative of these fishermen, we are providing information in this statement concerning the Japanese high seas gillnet fisheries for squid and salmon, and cooperative efforts concerning these fisheries between Japan and the United States. We trust that this information will be of use to the Committee in its consideration of high seas fishery issues in connection with the reauthorization of the Magnuson Act.

I. Overview.

Japanese vessels participate in several gillnet fisheries on the high seas. The fisheries targeting on Asian salmon and on squid are of the most interest to the United States. Both fisheries are carefully regulated in order to minimize catches of U.S. origin salmon. Japan's high seas salmon gillnet fishery has been conducted since 1952 pursuant to a treaty with the United States and Canada which regulates effort, fishing areas and fishing times in order to avoid the take of North American salmon. Japan has adopted domestic regulations concerning its high seas squid fishery which prohibit the retention of salmon, and restrict squid operations to areas where salmon are rarely found.

Japan recognizes an obligation to the international community to regulate its fisheries to conserve the living resources of the high seas and seeks to cooperate with the United States, Canada and other interested states to this end. Japan is committed to collecting necessary scientific data to assess the environmental impacts of its high seas fisheries, and to taking any conservation measures based upon that data which may be required. Japan's efforts in data collection with respect to the squid driftnet fishery evidence that concern.

Since 1955, Japan has engaged in scientific studies to gather scientific data regarding directed catch and bycatch in the high seas gillnet fisheries. Since the high seas squid fishery has only recently been initiated, data needs for that fishery are relatively acute. Japan has therefore been conducting research vessel, and observer data programs in the squid fishing area since 1982. Both the United States and

Canada have been invited to participate in the research and observer programs that will be implemented for 1989.

In its regulation of its high seas fisheries, and in collection and analysis of scientific data, Japan has consistently cooperated with the United States and other nations. Japan's position with respect to such international cooperation is based on international law as expressed by the the 1982 Convention of the Law of the Sea ("CLOS"). Under the CLOS, freedom of fishing is a fundamental high seas freedom that Japan is committed to preserve and protect. While the CLOS requires Japan and other nations to cooperate in management and utilization of high seas fisheries resources, the CLOS is also clear that the authority to regulate vessels on the high seas rests solely with the flag state. Ultimate responsibility for regulation of the Japanese high seas fisheries must, therefore, come from Japan.

Recent proposals to assert U.S. authority over the high seas fisheries would displace Japan from its primary role in implementing and enforcing regulations with respect to its vessels fishing on the high seas. These proposals have been based on concerns over the bycatch of U.S. salmon, marine mammals and seabirds that may be occurring in the Japanese high seas squid fishery. However, the available evidence concerning the impacts of the Japanese squid fishery on salmon, marine mammals and seabirds does not justify the unilateral assertion of U.S. jurisdiction. With respect to salmon, there is no scientific evidence that any bycatch that might occur in the legitimate squid fishery has any impact on the amount of salmon available to U.S. fishermen. The squid fishing area has been designed to minimize bycatch of all salmon. Such bycatch that might occur is limited primarily to Asian salmon, so that the impact on U.S. salmon is minimal.

There is also no evidence that Japanese fishermen have engaged in systematic illegal harvests of salmon outside of the legitimate squid fishing area. Reports of such illegal catches to date have implicated fishermen from another nation. With respect to marine mammals and seabirds, the available evidence indicates that bycatch in the squid fishery is relatively small compared to the total population of the affected species, and that no adverse changes in species populations have been observed during the period the squid fishery has been conducted. There is thus no evidence that the Japanese squid fishery has had any significant impact on marine mammal or seabird populations.

It is generally recognized by the scientific community that the greatest need at this time is solid data concerning the bycatch of salmon, marine mammals and seabirds in the squid fishery. The scientific and observer programs established by Japan for the 1989 fishing season will provide substantial amounts of new data that can be used for rational and prudent management of the fishery, and reduction of any negative impacts that might occur. Maximum benefits for all countries concerned in protecting their legitimate interests can best be achieved by participating in these data collection programs, and in cooperation and consultation in the analysis of the data.

Unilateral assertion of United States authority over the Japanese high seas fisheries would seriously undermine the law of the seas legal regime, and will make Japan-U.S. cooperation in these matters difficult or impossible. For example, certification of Japan by the United States under the Driftnet Act would preclude the United States from participation in the research and observer programs for the high seas squid fishery. In addition, the interests that the United States seeks to protect could actually be damaged. The substantial progress that has been made in reducing the incidental catch of U.S. origin salmon in the Japanese high seas salmon fisheries could be undermined by the collapse of international regulatory bodies such as the INPFC. Imposition of trade sanctions as a means of enforcement of domestic U.S. regulations on the high seas could precipitate a trade conflict that would damage the fishing industries of both the United States and Japan. For these reasons, it is clearly in the interest of United States as well as Japan to continue the cooperative approach to management of high seas fisheries that has characterized Japan/U.S. fisheries relations in the past.

II. The Japanese High Seas Gillnet Fisheries.

A. History of the Fisheries.

Japanese gillnet fishermen have conducted significant fisheries in the North Pacific since the late 1940's. Although the species targeted by these fisheries have changed over the years, the number of vessels involved in the gillnet fisheries has not increased significantly since the 1950's. From the 1950's, through the present, Japanese gillnetters have fished for Asian origin salmon on the high seas under treaty arrangements with the Soviet Union, the United States and Canada. Pursuant to the INPFC Treaty, Japan has consulted annually with U.S. fisheries officials and scientists on measures to protect North American salmon. In 1978 and 1986, major changes were negotiated in the treaty regime for this purpose. The number of vessels participating in the Japanese high seas salmon fishery has declined significantly. In 1962, 11 motherships and 369 catcher vessels participated in the fishery, while in 1988, only one mothership and 43 catcher vessels participated in the fishery.

In the late 1970's, Japanese gillnet fishermen began moving into the high seas areas off northern Japan in pursuit of commercial concentrations of squid discovered there. By 1981, over four hundred Japanese vessels were participating in this fishery. In that year, the Japanese government implemented a licensing system to limit the number of vessels participating in the fishery. At the same time, regulations were adopted under Japanese domestic law prohibiting the retention of salmon and limiting the times and areas where the squid gillnet fishery is permitted to operate.

B. Regulation of the High Seas Squid Gillnet Fishery.

The existing regulations concerning high seas squid gillnet fishing areas, including the recently extended northern boundary, have been established in order to separate the squid fishery from areas where there are concentrations of salmon. These boundaries are based on the best currently available scientific information, and as representatives of the United States have conceded in scientific meetings and in hearings before Congress, these regulations are generally considered to be effective in minimizing the bycatch of salmon. Japan has conducted annual scientific surveys of the salmon distribution in the squid driftnet fishery since 1984. Based on analysis of the data from these surveys, Japanese scientists have determined that the northern limit of flying squid and the southern limit of salmonids do not appear to overlap in most cases, and the major distribution areas are obviously separate. The distribution of flying squid (especially large squid) extends north of the former permitted fishing area, while the southern limit of salmonids does not reach to the former permitted area. For this reason, Japan extended the northern boundary of the squid driftnet fishery for 1989, in order to allow Japanese squid driftnet vessels access to good squid fishing grounds in areas formerly prohibited, while avoiding the bycatch of salmon.

Japan is making a substantially increased enforcement effort in 1989 to ensure that Japanese fishing vessels comply with the boundary regulations. Vessel days of patrol cruises of enforcement vessels focusing primarily on enforcement of the northern boundary will be substantially increased during the 1989 season, from 4 patrol boats and 265 vessel days in 1988 to 5 patrol boats and 600 vessel days in 1989. Penalties for violations of the squid fishing regulations have been increased, with the period for port confinement being doubled.

C. Collection of Scientific Data Concerning the Squid Fishery.

Japan's gillnet fisheries are not unique. The use of nylon gillnets in both coastal and high seas fisheries is common throughout the world. Such nets are extensively used by United States fishermen, particularly in the salmon and herring fisheries off the coasts of Oregon, Washington and Alaska.[1] As with most other fishing techniques, gillnet fishing involves some level of unintended but unavoidable incidental catch ("bycatch") of non-target species. The problem of minimizing such bycatch is a problem of fisheries technology, not nationality. Thus, neither Japan nor the other Asian nations which conduct high seas gillnet fisheries in the North Pacific have a monopoly on the bycatch problems associated with gillnet fishing. U.S. fishermen share these problems as well. A management policy that would destroy a fishery simply because bycatch occurs would thus justify the destruction of the U.S. gillnet fishery along with the gillnet fisheries of other nations.

Japan recognizes an obligation to the international community to regulate its fisheries to conserve the living resources of the high seas, and seeks to cooperate with the United States, Canada and other interested states to this end. Japan is committed to collecting necessary scientific data to assess the environmental impacts of its high seas fisheries, and to taking any conservation measures based upon that data which may be required. Japan's efforts in data collection with respect to the squid driftnet fishery evidence that concern.

Since 1955, Japan has conducted research with respect to the distribution of salmonids in the North Pacific. Since 1982, an element of this research has been to determine the effectiveness of Japanese squid regulations to avoid the incidental take of salmon in the squid fishery. Japan continues to conduct such research, and in 1989 will send two scientific research vessels to collect data on the distribution of squid and salmonids and on oceanographic conditions in the waters near the northern boundary of the Japanese squid driftnet fishery during the months of July and August, the most sensitive period for salmon bycatch in that fishery. Japan has invited one U.S. and one Canadian scientist to participate in this research in 1989.

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[1] For example, there were 1650 gillnet vessels licensed for the salmon fisheries off Washington State alone in 1988.

In addition, Japan will continue placing scientific observers on commercial squid vessels to collect data on commercial catches of target and incidental bycatch of salmonids, marine mammals and seabirds. For 1989, Japan intends to implement two scientific observer programs aboard commercial vessels. The first program will extend from June to December in order to provide observer coverage during the entire squid fishing season. During this period, 10 Japanese observers will be stationed on board ten commercial squid fishing vessels. Japan has invited five U.S. observers to participate in this program. The second "augmented" program will be conducted during the months of July and August, and is intended to focus on bycatch of salmonids at the newly established northern boundary of the squid fishing area. Twenty-two Japanese observers will be stationed on board 22 Japanese vessels during this period. Japan has invited 5 Canadian and 4 U.S. observers to participate in this program.

These research and observer programs will add substantially to the data available with respect to incidental catches of salmon, marine mammals, seabirds and other marine species in Japan's high seas squid fishery. Based upon the scientific data generated by these programs in 1989 and following years, and other scientific information that becomes available, Japan as the flag state will adopt such conservation measures for its squid driftnet fishery as may be required under international conservation standards.

D. The International Law Background of Japan's Regulation of its High Seas Gillnet Fisheries.

Japan's position in international consultations on high seas fishery matters is based upon the 1982 Convention on the Law of the Sea (CLOS). Article 87 of CLOS lists "freedom of fishing" as a high seas freedom qualitatively equivalent to other fundamental high seas freedoms: freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law, and freedom of scientific research. Japan, fully consistent with provisions of international law recognized by the United States, is committed to preserving and protecting these fundamental high seas freedoms.

The phenomenon of "creeping jurisdiction" is a threat to all of these high seas freedoms. As coastal states make increasing claims for special interests, responsibilities and authority over the activities of foreign nationals on the high seas, the long term security of all of the high seas freedoms becomes more problematic.

Yet, these high seas freedoms are fundamental to the commercial and defense interests of both the United States and Japan.2

Section 2 of Part VII of CLOS sets conditions limiting the freedom to fish on the high seas. In particular, Article 117 provides:

> All States have the duty to take, or to co-operate with other States in taking, such measures with respect to their nationals as may be necessary for the conservation of the living resources of the high seas.

Article 119(a) requires States to take conservation measures for the living resources of the high seas which are "designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield. . . ." Article 120, in conjunction with Article 65, requires States to "co-operate with a view to the conservation of marine mammals. . . ." While CLOS imposes a duty upon interested states to cooperate with one another in the conservation of high seas resources, it is clear that the implementation and enforcement of conservation measures on the high seas is the responsibility of the flag state.

III. There is No Evidence that Japan's High Seas Squid Fishery has any Significant Impact on U.S. Origin Salmon or on Marine Mammals and Seabirds.

A. Salmon.

The boundaries of the Japanese squid driftnet fishery have been carefully designed to avoid bycatch of salmon. The boundaries have been established based on the best available scientific information, and are "designed to restrict [squid] fishing to warmer waters south of the 15 degree isotherm, where salmonids are rarely found." Report of the Secretary of Commerce to the Congress of the United States on the Nature, Extent, and Effects of Driftnet

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2In this context, U.S. assertion in the 1987 Driftnet Act of special interests on the high seas with respect to the "marine resources of the United States" must be seen as a threat to the oceans regime reflected in CLOS. By claiming a special interest in any species which has ever been "found within" an area subject to U.S. jurisdiction, the U.S. seeks to justify interference with high seas freedoms guaranteed by CLOS. The U.S. claim is flatly inconsistent with -- and thus tends to undermine -- established international law.

Fishing in Waters of the Pacific Ocean ("Driftnet Report") at iii. Available observer and research vessel data indicate that the incidental catch of salmon within the squid driftnet area, if any, is extremely low. Driftnet Report at 54-55. For this reason, the United States has generally acknowledged that the Japanese regulations are effective in preventing salmon bycatch, and has sought to have other nations adopt the Japanese regulations for their own high seas gillnet fisheries.

Furthermore, there is no evidence that the minimal bycatch of salmon that might occur in the squid driftnet fishery would have any impact on the number of salmon available for harvest by U.S. fishermen, because the majority of such catch, if any, would be of Asian origin chum and coho salmon. Research vessel data indicates that salmon found in the driftnet area are almost exclusively chum and coho salmon. U.S. scientists estimate that 81% of the salmon in the area are of Asian origin, 67% Asian origin chums and 14% Asian origin cohos. Driftnet Report at 55, 57. U.S origin cohos are estimated to constitute 14% of the salmon in the area. Id. But, for much of the fishing season, U.S. origin cohos would not be exposed to bycatch because U.S. origin coho would be vulnerable to driftnet gear "only during the first few months of the fishery," since coho spend only one winter at sea and would have left the squid fishing area enroute to their spawning grounds by late July or early August. Id. at 57-8. "During the winter, immature coho would be too small for capture by the driftnets." Id.

Extrapolation of research vessel data on the occurrence of salmon in the squid fishery area in order to predict the potential bycatch of salmon in the commercial fishery is inherently uncertain. However, it is safe to say that any bycatch that might occur should correspond to the mix of species and continent of origin suggested above. Thus, while the authors of the Driftnet Report speculate based on research data that "the potential for [salmon] interceptions on the order of tens of thousands of salmonids . . . still remains a distinct possibility," id. at xi (emphasis added), it is clear that the impact of such bycatch on U.S. origin salmon would be relatively insignificant.

For example, if we assume that as much as 100,000 salmon were taken as bycatch, 81,000 of those salmon would be of Asian origin. Of the 19,000 U.S. origin salmon, 14,000 would be U.S. origin cohos, with the remaining 5,000 a mixture of other salmon species. This number represents a mere 1.5% of the total catch of coho salmon in Alaska for 1988, which exceeded 900,000 fish. It is clear that the small number of U.S. origin coho that might be taken as bycatch in the squid driftnet fishery should not have any impact on the amount of coho available to U.S. fishermen. This conclusion is confirmed by the recent history of the Alaskan coho fishery. Data collected by the Alaska Department of Fish & Game indicate that Western Alaska coho catches have been several times larger on average in the ten years after the high seas squid fishery developed than in the ten years before. Thus, there is no basis for claims of significant interception of U.S. origin salmonids in the legitimate squid fisheries.

It is clear that the threat of significant interception of U.S. origin salmon arises almost exclusively from fishing operations targeting on salmon outside of the boundaries of the Japanese squid fishing area. Recent reports of large amounts of illegally harvested salmon being offered in the international market provide a basis for legitimate U.S. concern. However, there is absolutely no evidence that Japanese fishermen are engaged in systematic illegal salmon harvests. To the contrary, all evidence of large scale illegal salmon harvests have implicated fishermen from another state. Violations of the Japanese boundary regulations for the most part have been confined to an area within 2 degrees of the former northern boundary. While these violations are regrettable, it is clear that the violators were targeting on squid, and not salmon. The extension of the northern boundary in 1989 should substantially reduce the number of violations of the boundary by Japanese vessels in the future. Since these violations occurred because the former Japanese regulations closed an important squid fishing ground to Japanese fishermen, there should be little continuing incentive to violate the northern boundary.

Japan has taken significant steps to cooperate with the United States in preventing illegal salmon harvests both by its own fishermen, and the fishermen of other nations. The focus of concern should be continuing this cooperative effort to eliminate illegal salmon fishing, not on destroying Japan's legitimate squid fishery. As in the past, cooperation between the United States and Japan will be fundamental to future efforts to halt illegal salmon fishing.

B. Marine Mammals and Seabirds.

Although the size and impacts of incidental catches of marine mammals, seabirds and other marine species in high seas gillnets clearly warrant further study, there is no indication at this time that these bycatches pose any immediate danger to the populations of these species. The number of vessels involved in Japanese high seas gillnet operations is not substantially greater today than those involved in such fisheries in the late 1950's. Although Japan's squid driftnet fishery has developed since the late 1970's, the growth of the squid fishery has been matched by a decline in Japan's high seas salmon fisheries. Whatever impacts Japan's high seas gillnet fisheries have had on the marine ecosystem, those impacts are not a recent phenomenon, and have not changed significantly in recent years.

Furthermore, the mere speculation that there may be an adverse impact on marine mammals and seabirds does not establish a reasonable basis for destroying Japan's legitimate squid fishery, and the livelihood of the fishermen and Japanese coastal communities that depend on those fisheries. The appropriate approach is to obtain data, and on the basis of such data to regulate the fishery in order to minimize any adverse impacts on non-target species, while preserving the economic viability of the fishery. The scientific and observer programs instituted for the 1989 squid fishery will provide a start at obtaining such data. Since the available evidence indicates that there is no immediate cause for concern with respect to bycatches of marine mammals and seabirds in the Japanese squid fishery, it is clearly appropriate to wait until the data is available before taking any regulatory action.

1. Marine Mammals.

There is no evidence that any marine mammal bycatch that might occur in Japan's gillnet fisheries is adversely affecting any marine mammal population. Of the four marine mammal species addressed in the Driftnet Report, U.S. scientists are unable to estimate the populations of two: the northern right whale dolphin and the Pacific white-sided dolphin. However, the authors of the Driftnet Report indicate that the northern right whale dolphin is widely distributed "in temperate waters from California to Japan and in the Sea of Japan." Driftnet Report at 44. With respect to the Pacific white-sided dolphin, the authors of the report comment that "their frequency of occurrence and wide distribution suggest they are one of the more abundant small cetaceans." Id. at 46. Population estimates for Dall's porpoise are provided in the report, and total over 1,340,000 animals. Id. at 47. The U.S. Department of Commerce determined in 1987 that the Dall's porpoise populations in the Bering Sea and western North Pacific were above Optimum Sustainable Population (OSP) levels. The total North Pacific population of northern fur seals was estimated in 1983 at between 1.19 and 1.23 million animals. Id. at 48. It is therefore apparent that the principal bycatches of marine mammals in the squid fisheries are coming from large marine mammal populations distributed widely across the North Pacific.

Only one of the marine mammal species taken in the squid driftnet fisheries -- the northern fur seal -- has been identified as below its Optimum Sustainable Population (OSP) by U.S. scientists. Yet, there is no indication that bycatch in the squid driftnet fisheries has contributed to the decline in the fur seal population. The Driftnet Report indicates that this decline began in the early 1970's -- prior to the development of the squid fisheries. Id. The report states further that "[t]here are indications that the rate of the decline of the population has decreased and the population may be leveling out or possibly increasing." Id. It seems clear, therefore, that fluctuations in the northern fur seal population are essentially independent of the squid driftnet fishery.

The Driftnet Report states that, due to the absence of data, "estimates of the incidental take cannot be made for any of the marine mammal species known to be taken in the squid driftnet fisheries." Id. at 49. While the authors of the report indicate that an extrapolation from the available data could generate an estimate of total incidental take as high as "tens of thousands of animals," id., they acknowledge that such an extrapolation would be "scientifically and statistically unsupportable," id. at ix. As the report states, "[t]he data currently available on incidental takes are insufficient to make meaningful, much less accurate estimates." Id.

Current data is clearly an inadequate basis on which to base regulations concerning bycatch of marine mammals in the Japanese squid fishery. The scientific and observer programs that will be implemented for the 1989 squid fishery should provide the initial data on which such regulations could be based. Since there is no immediate danger of harm to the marine mammal resource from the squid fishery, the appropriate course is to wait until the data has been collected and analyzed before taking regulatory action.

2. Seabirds.

There is no evidence that the entanglement of seabirds in high seas squid gillnets is adversely affecting any seabird population. Densities of seabirds are low in the squid fishing area, averaging about three birds per square kilometer. Id. at xii. The incidence of seabird entanglement is low. The Driftnet Report indicates that seabirds were entangled in only half of the retrievals observed by U.S. scientists, id. at 65, and that entanglements observed by U.S. scientists averaged less than one bird per operation (set and retrieval of a 35 km net), id.

"Rough estimates" of relative mortality by seabird species due to driftnet entanglement presented in the Driftnet Report range from 0.1% to 6.2%. Id. at 68. However, the Driftnet Report indicates that the 6.2% mortality calculated for Laysan albatrosses is "obviously biased by skewed estimates of catch rates," since at this level of annual bycatch mortality "the population would have to be exhibiting a decline, which does not appear to be the case." Id. The authors of the Driftnet Report conclude that, due to sample size and distribution, the catch rates observed by U.S. scientists "are not reliable and cannot produce estimates of the incidental take." Id. at xiii.

IV. Conclusion.

Japan and the United States have a long history of cooperation in resolving issues related to the high seas fisheries. Japan looks forward to continued cooperation with the United States on these issues. With respect to the squid fisheries, the first step is to obtain adequate data on which to base reasonable regulations for the fishery. It is our hope that Congress will not take any actions concerning the high seas fisheries that would endanger the cooperation necessary to effectively manage the high seas fisheries.

Such unilateral action could adversely affect the interests the United States seeks to protect. Such action would weaken the international law of the sea regime of which the United States is a primary beneficiary. It could lead to collapse of regulatory bodies such as the INPFC. Imposition of trade sanctions could lead to trade conflicts that would damage both the United States and Japanese fishing industries. Finally, the management policy that would eliminate a fishery merely due to the possibility of negative impacts could easily justify the elimination of U.S. gillnet and trawl fisheries. For these reasons, we believe that it is in the best interests of both Japan and the United States to maintain the cooperative approach to management of the high seas gillnet fisheries that has characterized their relations in the past.

Organized 1870 to Promote the Conservation, Development and Wise Utilization of the Fisheries

AFS American Fisheries Society

ROBERT G. WHITE
President 1988-1989

CARL R. SULLIVAN
Executive Director

PAUL BROUHA
Deputy Director

1989 JUL 31 PM 1:44

July 21, 1989

Honorable Senator Ernest F. Hollings
SR-125 Russell Senate Office Building
Washington, DC 20510-4002

Dear Senator Hollings:

I am the Immediate Past President of the American Fisheries Society and currently the Chairman of the External Affairs Committee. This Committee has been working with the Fish Chiefs in the Mississippi River drainage. The fishery resources of the Mississippi River Drainage moves through the jurisdictions of 29 states. The management of water, land and fisheries in each of these states affects the resources of the other states. The fishery resources of the Mississippi River drainage are of great economic, social and political significance to the residents of these states and the nation. The fishery resource management agencies of these states and the federal government are charged with improving these fisheries for the benefit of the publics they serve.

The American Fisheries Society endorses cooperation of the 29 states and the federal fisheries management agencies in the interjurisdictional management of the fishery resources throughout the Mississippi River drainage through the establishment of cooperative interstate fisheries research and management programs designed to provide information for the development of interjurisdictional fisheries management plans.

Currently the re-authorization of the Interjurisdictional Fisheries Act (IFA) (PL 99-659) is before Congress. During the re-authorization process the Act needs to be clarified to clearly state its original intent to include all the inland states.

The IFA's definition of "interjurisdictional fisheries resource" restricts the resource to (a) certain EEZ resources, (b) certain Great Lake Resources or (c) resources associated with an interstate fishery management plan.

Inland states that don't border on the Great Lakes or don't belong to a Congressionally sanctioned Compact cannot "gracefully" use the IFA as a vehicle to facilitate cooperation.

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The states in the Mississippi River drainage wish to have the opportunity to develop interjurisdictional fisheries research and management programs that will lead to the development of interjurisdictional fisheries management plans.

It is our recommendation that the definition section of the Act be expanded to include the Mississippi and the Colorado Rivers specifically, similar to section (c) which defines the Great Lakes. Section 3. (2) Definitions-- would be expanded by adding (d) a resource which occurs between the waters under the jurisdiction of two or more States in the Mississippi River drainage; or (e) a resource which occurs between the water under the jurisdiction of two or more States in the Colorado River drainage.

By adding (2) d & e to Section 3. Definitions, all the waters that are shared by two or more states will be covered by the definition section of the Act.

This additional language in the definition section will clarify the intent of Congress, "to promote and encourage State activities in support of the management of interjurisdictional fisheries resources".

The legislative history should be expanded to define what is met by "Mississippi River drainage and Colorado River drainage". "Drainage" should be defined as all land that drains water that enters the Mississippi or Colorado Rivers.

Also in the legislative history of the Act, no where is it pointed out, that with regards to our river resources, they are unique in that even though a fishery resource may or may not occur or move between two or more states, the fishery habitat itself moves between the states. This is a unique situation with regards to the responsibilities the states have to one another ever though the fishery itself may not be a shared responsibility. Ultimately the states at the far upper end of the drainage have responsibility for the habitat that exist at the lower reaches of the drainage.

Thank you for including this letter as part of the testimony on the re-authorization of the Interjurisdictional Fisheries Act.

Sincerely,

Stan Moberly

Stan Moberly
Immediate Past President
American Fisheries Society

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

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June 6, 1989

The Honorable Ernest F. Hollings
United States Senate
SD-508
Washington, DC 20510

Dear Senator Hollings:

I want to express our appreciation to you for the hearings held by the National Oceans Policy Study on May 17 and 18 on the reauthorization of the Magnuson Fisheries Conservation and Management Act (MFCMA) and recent developments regarding foreign driftnet fisheries occurring outside the U.S. 200-mile zone. I would like to provide to you some additional information you might find useful.

The MFCMA is perhaps the most important piece of fisheries legislation passed by Congress. The Act provides the framework for conservation, management, and allocation of the fisheries off our shores. It established the regime under which the United States gained control of its fisheries, established the mechanism which led to the Americanization of the immense groundfish fisheries off Alaska, and fostered the rapid growth we have seen in the U.S. fleet. The success of the Act in this regard is something that Congress can be proud of, but that does not mean that our work is complete. There are serious issues surrounding the management of our domestic fisheries, and significant conservation and management problems affecting U.S. stocks which are being caused by foreign fisheries occurring beyond our zone.

Background

In order for you to understand the significance of these issues to Alaska, let me first provide you some background information about the importance of our fisheries to Alaska and the nation. Much of the following information comes from a report released in March of 1989 entitled Alaska Seafood Industry Study: A Summary. The study was conducted on behalf of the Alaska Seafood Industry Study Commission, a consortium of 29 organizations from industry, state agencies, and the University of Alaska.

Alaska leads the nation in value of commercial seafood landings. In 1987, the value of seafood landings in Alaska was about $1.1 billion, with an estimated $1.8 billion for 1988. In 1987, the first wholesale value of the Alaska seafood harvest, after processing, was $1.9 billion. In 1988, estimates indicated that this rose to $3 billion. Fisheries off Alaska accounted for roughly 46 percent of total U.S. production in 1986 and will probably top 50 percent in the near future. Over half a billion dollars worth of seafood were shipped directly from Alaska to foreign nations in 1987, a third of all U.S. seafood exports.

In a state with little or no manufacturing-based economy, the seafood industry is the largest private, basic industry employer, providing more than 77,000 seasonal jobs which equal 33,000 year-round direct and indirect jobs. Total investment is estimated at roughly $4 billion, and the payroll is the largest in the state among private industries: approximately $600 million. Four Alaska communities are in the nation's top ten commercial fishing ports, with Kodiak the top port in 1988. In one major region of the state, over 90 percent of the private sector income is generated by commercial fishing, and many of our coastal communities are almost entirely dependent on commercial fisheries for cash income.

The recreational fishing industry in Alaska is also a major contributor to the economy in many areas of the state. For example, in the Juneau area alone, the sport fishing industry is estimated to generate some $14 million. Contributions to the regional economy of southcentral Alaska by recreational fishermen were estimated at over $175 million in a recent study. While no good statewide data exists for the total employment in this industry or revenue generated, it is obviously a very significant part of Alaska's fisheries economy.

Subsistence fisheries are also very important to Alaskans. More than 35 million pounds of fish are caught statewide for subsistence purposes. In many rural areas of the state, the subsistence harvest value probably exceeds the importance of the commercial fisheries to the local economy. Many communities would not be able to exist in rural Alaska without the noncommercial harvest of fish and game. A minimal estimate of the replacement value of the fish caught statewide by subsistence fishermen would be about $120 million. Given the fact that, in many areas of Alaska (particularly in western Alaska), the economy in terms of cash income is one of the poorest in the United States and replacement with commercially-imported foods is unaffordable. The true importance of the subsistence fishery is even greater. In 1985, nearly 32,500 families (about 114,000 people) were supported by subsistence fisheries statewide.

International Fisheries Issues

Alaska holds a unique status as a state bounded on one side by Canada and the other by the maritime domain of the Soviet Union. With 33,000 miles of coastline (more than the rest of the U.S.) and continental shelf area more than three times the rest of the continental U.S., Alaska must play in the international fisheries arena as a matter of self-defense and economic advantage. Major issues of concern to the state include interception of U.S. origin salmon and steelhead by foreign vessels on the high seas; the unregulated pollock trawl fisheries in the so-called "donut hole" area of the Bering Sea; and the emerging fisheries relationship between the U.S. and the Soviet Union.

1. High Seas Salmon Interception

The interception of salmon and steelhead by foreign fleets is having a direct and severe impact on Alaska and other U.S. fishermen. Over the past few years, the hardest hit stocks were central and western Alaska chinook, coho, and sockeye. With the rapid increase in the size of the squid fleets of Japan, Taiwan, and Korea, the impacts are now being felt by southeast Alaska fishermen as well as fishermen throughout the Pacific northwest.

The State of Alaska has attacked the problem of high seas interception on a number of fronts. Through participation in the INPFC, we have sought to reduce the impact of the directed salmon fisheries of Japan on Alaskan stocks. Through participation in the negotiations under the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 we have sought to obtain adequate monitoring and enforcement agreements on the squid fleets of Japan, Taiwan, and Korea.

INPFC was signed in 1952 by the nations of Japan, Canada, and the United States. While a great deal of valuable research was conducted under the auspices of the INPFC, no significant reductions were achieved in the level of interceptions until adoption of the Magnuson Fishery Conservation and Management Act in 1976. The 200-mile limit extension gave the U.S. control over significant areas that had been fished by the Japanese high seas salmon fleets. In the renegotiation of the INPFC in 1978, the U.S. negotiated concessions in all of the Japanese high seas salmon fisheries while allowing them to keep a limited area in our zone. This recognition may have reduced interceptions by as much as 70 percent. The results were most dramatic for Bristol Bay sockeye and western Alaska coho.

Another series of bilateral negotiations took place in 1985-86, resulting in further phase-outs of the Japanese mothership fishery in the central Bering Sea. Restrictions were achieved on allowable effort in their mothership fishery as well as some pull-back in their landbased fishery.

In 1988, the Japanese fishery was excluded from our EEZ due to litigation by western Alaska fishermen and environmental groups. Court action denied the Japanese a marine mammal taking permit under the Marine Mammal Protection Act (MMPA), and subsequent action by Congress amended the MMPA to prohibit the Department of Commerce from issuing the Japanese a permit. As a result, the Japanese have requested, through the INPFC, to convert their mothership-style fishery to a landbased-style operation because of lost fishing area. This has led to a series of negotiations between Japan, Canada, and the U.S. The U.S. side has developed a set of requirements which would provide adequate monitoring and enforcement on the converted fleet to ensure that the fleet fishes in designated areas and does not exceed the quota. In early April, the Japanese broke the talks off and decided that, at least for the 1989 season, they would fish in a mothership-style mode. However, they have voiced a desire to resume these talks for the 1990 season.

In addition to the directed salmon fleet of Japan, the rapid growth of the squid fleets of Japan, Taiwan, and Korea present significant risks to U.S. origin salmon and steelhead. Negotiations conducted under the auspices of the Driftnet Act of 1987 for monitoring and enforcement agreements on these fleets have not been successful to date. The talks with Japan have gotten the farthest, and tentative agreements were reached in Tokyo in early May of this year. The agreements would have established the first true observer program in a squid fleet, and provided for increased enforcement measures by the Government of Japan. However, there is considerable concern in the U.S. industry that the terms of the agreements with Japan were not sufficient to obtain reliable data regarding salmon bycatch.

The State of Alaska believes that there is a desperate need to develop information regarding salmon and steelhead interception in the squid fleets but has serious reservations regarding these agreements and whether or not they satisfy the requirements of the Driftnet Act. The largest problem with the agreements that we see is the lack of real time monitoring of the fleet in 1989, and the weak commitments for satellite monitoring and an expanded observer program for 1990. The Secretary of Commerce determined in late May that the agreements were not adequate to meet the requirements of the Driftnet Act. The State of Alaska has strongly urged both the Secretary of Commerce and Secretary of State to go back to the table to strengthen elements of these agreements.

2. Donut Hole

The state is also concerned about the rapid expansion of the unmonitored fishing effort for pollock in the international waters of the Central Bering Sea. While the magnitude of these catches cannot be accurately substantiated, their growth is coincidental with the displacement of foreign fleets from our EEZ. The reported magnitude of these catches now rivals the total allowable catch in our zone. Several hypotheses have been advanced regarding the relationship of the stocks in this area to the stocks in the U.S. and U.S.S.R. 200-mile zones. Adequate population surveys, tagging and migration data, or data on the biological composition of the catch still do not exist to quantify the effects of massive removals of fish from this "donut hole" area on domestic pollock populations. There is, however, a growing body of evidence that this unregulated harvest could impact eastern Bering Sea pollock populations in the U.S. zone.

Similarly, there is no estimate of the incidence of salmon bycatches in this newly expanded fishery. We do know that chinook salmon can be taken in significant numbers in trawl fisheries, and we know that chinook salmon found in the donut hole area are overwhelmingly western Alaskan in origin. Thus, unregulated trawl fisheries in this area could pose a significant threat to Alaska salmon resources as well.

While there may be a lack of information regarding the biological relationship of pollock stocks in Bering Sea international waters to those in our zone, observations of illegal fishing by Japanese vessels and the current low enforcement effort by the U.S. in this area further lead us to believe that a substantial portion of this catch could be coming from stocks already considered fully utilized by U.S. domestic fishermen. We believe that these fisheries present vast potential for damage to both our domestic groundfish stocks and to salmon populations which are of considerable economic importance to Alaskan residents, particularly in western Alaska.

3. U.S./U.S.S.R. Fisheries Negotiations

The State of Alaska has taken a great interest in the ongoing development of the fisheries relationship between the U.S. and the U.S.S.R.. In May of 1988, the United States and the Soviet Union signed a comprehensive fisheries agreement which was subsequently approved by legislation in Congress as a GIFA under the MFCMA. The agreement established an Intergovernmental Consultative Committee (ICC) to coordinate U.S./U.S.S.R. fisheries matters, and the legislation established a North Pacific and Bering Sea Fisheries Advisory Body to advise the U.S. Section on the ICC. The state is represented on the advisory body by the Commissioner of the Alaska Department of Fish and Game.

The state believes that the emerging relationship between the U.S. and the U.S.S.R. presents one of the most significant opportunities to address the issues of high seas salmon interception and the unregulated donut hole pollock fisheries. In fact at the latest meeting with the Soviets which occurred in February in Washington, D.C., they put forward proposals on each of these issues. Unfortunately, although a Memorandum of Understanding on enforcement was signed at the meeting, the U.S. side was not in a position to respond to their broader proposals at that time.

The U.S./U.S.S.R. Advisory Body has taken the lead in preparing a proposed U.S. response to the U.S.S.R. proposals. For salmon interception issues the Soviets proposed establishing a new organization to regulate salmon harvests in the North Pacific. Their proposal would prohibit salmon harvests outside the EEZ's of the coastal nations. In response, the advisors have drafted a proposed convention on anadromous species which would include the major states of origin of anadromous species in the North Pacific. The draft would prohibit the taking of salmon and steelhead in the international waters of the North Pacific and contains provisions for cooperation among the signatory parties to take action against nations which take salmon illegally.

To address the Soviet proposal on the donut hole, the advisors called a meeting on May 12 to review the U.S.S.R. proposal and prepare a recommended U.S. position. The meeting was hosted at the Northwest and Alaska Fisheries Center in Seattle. The status of knowledge regarding stock composition and movement was reviewed in detail by U.S. scientists, the Soviet proposal was carefully analyzed, and a proposed U.S. position was formulated. The proposed position would be to bilaterally establish an organizational framework to determine allocations for the international waters of the Bering Sea. This would include developing a common database and a uniform methodology for stock assessment and determining harvest levels. The advisors, recognizing the problems associated with fisheries conducted by third-party nations in international waters, wished to explore with the Soviets mechanisms for bringing these nations under the regulatory framework once it is established.

These two proposals and supporting documents have been forwarded to the State Department for federal interagency review and Circular 175 negotiating clearance. The next meeting with the Soviets has been tentatively scheduled for the end of June. The advisors have recommended that no meetings occur until the U.S. government has developed official positions and a negotiating strategy on each of these issues. This would include completion of the interagency review and securing the required negotiating authority to enter into actual negotiations.

4. Summary

The State of Alaska believes that several things need to be done to effectively address these international fisheries issues:

- Strengthen our enforcement presence in the North Pacific and Bering Sea. The Coast Guard has modestly increased its fisheries enforcement presence in the area, but budget limitations are a major hinderance. It has become increasingly obvious that the only way to protect our fish is to maintain a strong enforcement presence on the grounds, and the only way to do that is to provide adequate funding.

- Provide strong and clear language in the MFCMA asserting U.S. jurisdiction over U.S. origin anadromous species, and establishing the basis for a defensible rebuttable presumption for U.S. salmon and steelhead caught on the high seas.

- Strengthen the Driftnet Act. One of the problems with the negotiation process conducted under the Driftnet Act was the lack of suitable negotiating clout on the part of U.S. negotiators. To date, the certification and sanctions in the Act have not been a credible threat to the other nations. The sanctions under the Pelly Amendment need to be broadened to include possible sanctions of any product imported from offending nations.

- Step up efforts to develop a cooperative relationship with the U.S.S.R. on these issues. Negotiations need to proceed as soon as possible on the salmon and donut hole proposals already on the table. The provisions of the MOU on enforcement which was signed in February need to be implemented, and further cooperative enforcement arrangements need to be pursued where appropriate.

Domestic Fisheries Issues Under MFCMA

The significance of fisheries to Alaskans underscores the importance the state places on the effectiveness of the MFCMA to govern domestic fisheries. While the Act has been a remarkable success since originally passed in 1976, the transfer from a foreign dominated fishery to a fishery which is almost wholly domestic has created new issues and management problems not foreseen at the time of passage. In order to fully realize the long-term benefits from our fishery resources we need to strengthen the conservation measures in the Act, improve our management system, and provide for a rational and fair allocation system. Recent issues surrounding the Gulf of Alaska pollock fishery, and the increasingly troublesome bycatch problem, serve to highlight our concerns.

1. Gulf of Alaska Pollock

In 1989, the total allowable catch (TAC) of pollock in the Gulf of Alaska (GOA) was 60,000 mt (33 percent lower than the 1988 TAC of 90,000 mt). The reduction arose because of uncertainties in the estimate of pollock biomass. Stock assessment for GOA pollock is normally based on annual hydroacoustic surveys of spawning aggregations conducted in Shelikof Strait, supplemented by triennial trawl surveys. These surveys have indicated annual declines in the biomass of pollock since 1981. It was assumed that the vast majority of GOA pollock spawned in Shelikof Strait. In 1988, the hydroacoustic survey indicated a biomass of only 330,000 mt (substantially lower than both the 1987 trawl survey estimate of 593,000 mt and the assumed threshold of 770,000 mt). Because of the uncertainties regarding the pollock biomass, the biomass estimate of 593,000 mt from the 1987 NMFS trawl survey was deemed the best estimate of stock abundance. A 10 percent exploitation rate was applied to this biomass estimate to yield a TAC for 1989 of 60,000 mt.

On March 23, 1989, NMFS closed the central and western GOA pollock fishery because of the projected attainment of the 60,000 mt TAC of pollock. In 1988, with a TAC of 90,000 mt, the fishery never closed and the total pollock catch was only 56,000 mt. The early attainment of the TAC was attributed to large pollock catches by the factory trawler fleet. Roe stripping, where the eggs are taken from the females and the carcasses (both male and female) dumped at sea, was reportedly widespread. The attainment of the TAC and subsequent closure of the fishery this early in the season was unexpected and has caused widespread concern among shorebased processors in Alaska who fear that they may be forced to cease operations because of a lack of pollock to process.

The state believes that this practice is wasteful and, if carried to extremes, could adversely affect the health of GOA pollock stocks. These events have prompted several proposals to the North Pacific Fishery Management Council (NPFMC) to ban roe-stripping because of concern over waste of pollock and possible adverse effects on the population as a result of the practice. As a result of the proposals, the NPFMC has directed its plan teams to develop, for initial review at the June council meeting, an amendment to ban pollock roe-stripping. A final council vote on the ban will be scheduled for September, following public review this summer. Any action the council takes on the roe-stripping issue is intended to be in place by January 1, 1990.

2. The Bycatch Issue

The issue of "bycatch" is becoming an increasingly complex and controversial topic. The use of nonselective harvesting methods such as trawls, longlines, and pots often yields catch composed of a variety of species including both target and incidental (bycatch) species. Conflicts arise when bycatch in one target fishery can potentially reduce the amount of resource available to a different directed fishery. In extreme cases, this can even exacerbate conservation problems for species or stocks with low or declining populations and which are subject to high bycatch rates. Incidental catch of halibut, Tanner crab, king crab, herring, and salmon have been of particular concern in the groundfish fisheries off Alaska.

For example, red king crab stocks have yet to recover from the declines of the early 1980s. Halibut stocks are also declining, and the halibut quota is projected to decline by roughly 13 percent for 1990 and 15 percent for 1991. Herring fisheries in the Bering Sea are also experiencing significant declines, and some fisheries may be closed if the populations continue to fall. These population problems are due to a combination of factors and cannot be attributed solely to bycatch. However, significant bycatch rates of depressed species can amplify existing biological and management problems and frustrate attempts to rebuild stocks.

A variety of approaches have been used or proposed to limit bycatch. One method is to restrict certain fisheries from specified areas at selected times. Another method of bycatch controls is to establish allowable rates or "caps" on the amount of bycatch species taken in a particular fishery. If the rate or "cap" is exceeded for a bycatch species, the fishery would be closed. This is the most widely used method in the Alaska groundfish fishery. However, approaches based on bycatch rates or caps require some means of estimating the normal rates of bycatch for various species, and the only reliable method of obtaining these rates is from onboard observers.

The roe-stripping and bycatch issues are both conservation and waste issues. They serve to outline the need to strengthen the conservation provisions of the Act, and point up the need for accurate and timely information from formal research efforts as well as directly from the fishery as it proceeds on the grounds. It is apparent that if we are to realize the full benefits from our fisheries, then we need to take the responsibility to manage those fisheries seriously.

In December of last year, the Scientific and Statistical Committee for the North Pacific Council found that the data on GOA pollock were insufficient to reliably estimate pollock biomass. In January of this year, the North Pacific Council went on record declaring that the lack of observer data on the domestic fishery was preventing the council from meeting its responsibilities under the MFCMA. Clearly, fishery managers cannot manage without accurate information, and this situation needs to be rectified.

The state believes that a number of steps should be taken during the reauthorization of the MFCMA to address these problems:

* Strengthen the conservation provisions in the Act to address waste and conservation issues. The purposes and national standards of the MFCMA set the standard for fisheries management and utilization. Conservation of our fisheries resources should be the primary purpose of the Act, full utilization of caught fish and the elimination of wasteful practices should be a major goal.

* Require 100 percent observer coverage on all fisheries unless a fisheries management council decides that it is not warranted. Such a provision in the Act would ensure action by the councils to address fisheries where 100 percent observer coverage is not necessary or practical, yet would also ensure coverage of those fisheries where information is needed. Most importantly, it would set a high standard and would provide the flexibility to fishery managers and the councils to develop programs which take into account the differences among various fisheries.

* Provide a clear and reliable funding mechanism for fisheries management and research. Observer programs, fisheries research, and fisheries management activities are all costs of doing business if we are going to manage our fisheries in a manner which ensures the long-term

> biological health of our stocks and maintains the economic base of the industry. Industry will have to share in this burden. In Alaska, revenues collected by the state from industry are sufficient to cover the costs of fisheries management. The state believes that this should be the case in federal fisheries as well. Any steps taken to accomplish this goal should ensure that fees collected from a particular region go back to that region for fisheries management purposes and that the fee structure is fair and distributes the burden equitably.

As a final point, allocation of our bottomfish resources is becoming a more contentious issue each year. There are substantial indications that the offshore fleet is rapidly approaching overcapitalization. This will place ever increasing pressures on the resource and the fisheries management system. The GOA pollock problem mentioned earlier is a good example of what we can expect, and there may be a need to provide a preference for shorebased processors to prevent similar occurrences in the future and maintain an economy for our coastal communities. The state firmly maintains that any limited access system for the groundfish fisheries off our shores must include adequate provisions to ensure that Alaskan fishermen are not precluded from the fishery. As we continue to develop these fisheries, we must not forget the small fishermen, and the needs of the smaller rural communities in our state which depend on fisheries for their livelihood.

Thank you for including this information in the hearing record. The State of Alaska stands ready to work with you and the committee to address these important fisheries issues.

Sincerely,

Don W Collinsworth

Don W. Collinsworth
Commissioner

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May 26, 1989

Honorable Ernest F. Hollings
Chairman
Senate Commerce Committee
254 Senate Russell Office Building
Washington, DC 20510

Dear Mr. Chairman:

At last week's Senate Commerce Committee hearing on reauthorization of the Magnuson Fisheries Conservation and Management Act, no witnesses were present to provide the points of view of, or necessary information pertaining to, foreign fishing. As a result, your committee was subjected to a barrage of one-sided, anti-Japanese propaganda. This is likely to result, I am afraid, in legislation that will be extremely damaging both to our friends and allies abroad and to overall U.S. foreign and economic interests.

In the interests of fairness, fact and balance, I respectfully request that the following information be made part of the hearing record and incorporated into the committee report.

BACKGROUND

Before passage of the MFCMA in 1976, most of the Bering Sea was a fishery developed and utilized by Japanese fishermen. It was the source of 1.5 million metric tons of fish annually for the Japanese, for whom fish is the major component of their diet.

American fishermen had neither the vessels nor the technology to utilize the abundant fisheries resources in this distant and forbidding body of water that for the most part is closer to the islands of Japan than to Anchorage. At that time, also, there were no U.S. markets for most Bering Sea fish, with the exception of king crab and halibut.

Passage of the MFCMA, in what one American legal authority called the biggest resource grab since the Europeans wrested America from the Indians, stripped the Japanese fishermen of most of their traditional Bering Sea fisheries. Japan, nevertheless, agreed to honor U.S. claims of 200-mile jurisdiction, particularly as they were accompanied by U.S. promises that fish resources not utilized by American fishermen would continue to be made available to Japanese fishermen.

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Then, one by one, year after year, the American promises were broken. And last year, the Japanese were barred completely from America's 200-mile zone.

The rapid development of the U.S. fisheries industry - - from a $7 billion industry in 1976 to a $28 billion industry today - - owes much to Japanese cooperation, investment, research, technology and assistance.

Since 1976, Japanese fishermen have paid almost $224 million in foreign fishing fees to the United States. Their research in the Pacific, Gulf of Mexico and the western Atlantic has provided American fishermen with a wealth of knowledge about existing and potential marketable resources. They have contributed technology that enabled American fishermen and processors to develop new and valuable fisheries and markets for Atlantic tuna, squid, butterfish, salmon, Alaska pollock, black cod, sea urchin, salmon and herring roe, tanner crab, goeduck clams and surimi.

The Japanese have contributed tens of millions of dollars to underutilized fisheries development in Alaska. They have given fishing boats and gear to Inuits in Alaska, along with training in their use. They have contributed technology and resources to Alaska and Washington salmon hatcheries. They have developed joint ventures that enabled Americans to upgrade their fishing vessels and expand their fishing operations to the far reaches of the Bering Sea.

Japan always has been the biggest market for U.S.-caught fish. Last year, the Japanese bought $2.1 billion worth of American-caught fish, accounting for about 65 percent of all U.S. fish exports. The U.S. salmon industry, alone, is dependent upon Japan for 66 percent of its world exports. 87 percent of Alaska's crab exports go to Japan.

Without Japan, Alaska's fishery industry could not enjoy its current prosperity.

THE DRIFTNET ISSUE

All of the testimony on the driftnet issue at the hearing, with the exception of testimony presented by the government witnesses, was a blatant, scurrilous and unfounded exercise in vicious Japan-bashing. Rarely have the halls of Congress been tainted with such venom.

To begin with, Japan has done more than any other Pacific country to prevent the high seas taking of U.S.-origin salmon. Under a current agreement with the United States, Japanese government patrol boats monitor the high seas squid driftnet

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fleet. U.S. observers have monitored the Japanese squid driftnet catch. Japanese government inspectors monitor the ports and markets to prevent the landing and sale of U.S. origin salmon by other than INPFC-regulated salmon fishing boats. And Japanese government regulations impose severe penalties for the catch, landing or sale of Japanese-caught U.S.-origin salmon in Japan by squid driftnet vessels or their agents.

Japan is not the culprit in the interception of U.S.-origin salmon on the high seas.

As for the highly emotional and exaggerated charge that driftnets are an environmentally destructive "wall of death," that remains to be proven. There is no evidence that driftnet fishing is any more environmentally destructive than any other method of commercial fishing method.

Item: Year after year, scientifically monitored Japanese driftnet fishing for salmon caused significantly fewer marine mammal deaths than provided for by U.S. permits issued in compliance with the Marine Mammal Protection Act.

Item: U.S. research has shown that lost driftnets do not continue to "ghost fish", i.e., continue trapping fish, year after year. The research showed that tidal currents and wave action tangle the nets into ball-like masses which sink to the bottom in a short period of time.

Item: Despite travelling over 1,600 miles to film the action of Taiwanese drift nets on the ocean environment, EarthTrust scientist Sam LaBudde was able to show only one immature billfish trapped in the driftnets he filmed. His shot of one young dolphin dead in a driftnet looks like it is either "imported" or staged because it appeared in isolation, with no diver nearby as in his other underwater shots. Other than that, he could find no evidence of a marine mammal or salmon in the Taiwanese nets. In fact, over 85 percent of Mr. LaBudde's film, the centerpiece of the Senate hearing, consisted of footage taken years ago of permitted Japanese salmon driftnet fishing in the U.S. 200-mile zone. The use of footage from a legal salmon fishery improperly gave viewers the impression that the high seas drift net squid fishery intercepts large numbers of U.S.-origin salmon.

Item: The picture of a dead whale entrapped in netting was fraudulently identified as a victim of Asian driftnet fishing. The netting entangling the dead whale actually was a trawl net, not a drift net. The net holding the sea turtle also was not a driftnet used by the Asian fishermen.

Item: Many fishery scientists believe that fishing that removes a full cross-section of marine life in a fishing area is

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ecologically better than a method that removes only a few selected species. Removal of a few selected species results in the remaining undesirable fish becoming dominant in the environment. The undesirable species suppress the recovery of the more desirable species. In areas where a full cross-section of species is taken, ocean currents soon bring in fish and larvae to restore the original balance.

Item: There are tens of millions of dolphins in the Pacific and hundreds of millions, perhaps billions, of sea birds. Both forms of fauna multiply rapidly and the size of their populations are more greatly affected by their available food supplies and environmental conditions than net entrapment. The impact of driftnet fishing on marine mammal and sea bird populations cannot even be guessed at until there is much greater research .

What is really needed in regard to the driftnet issue is more research, not inflammatory rhetoric.

THE SALMON ISSUE

According to the June issue of Pacific Fishing, America's salmon fishermen appear to be crying all the way to their banks. **Pacific Fishing** noted that the total value of last year's harvest brought Alaskan salmon fishermen a record "wallet-bulging $742 million." The lower 48 did not do too badly either. According to **Pacific Fishing**, "In California, the catch as well as prices made the record books."

If this was the result of alleged high seas interception of American origin salmon, perhaps U.S. fishermen should encourage more of it.

In 1988, Alaskan salmon fishermen caught 99.4 million fish, up from 1987's catch by almost 4 million fish. Could that be the result of high-seas driftnet interception by the hated foreigners?

And how many salmon are the Alaskan fishermen claiming the hated foreigners "stole" from them? 300,000? 500,000? One million? One million would be one-one hundredth of their catch, but Nature does not guarantee that they all would have made it back to land in some Alaskan fisherman's net.

High seas fishing is fishing that occurs outside of any nation's economic zone. U.S. fishermen engage in high seas fishing for a variety of fish, but other nations do not try to penalize us for taking fish that might have been born in their waters. Nevertheless, Japan recognizes the United States' claim to U.S.-origin salmonoids (salmon and steelhead trout), no mat-

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ter where in the world they might swim. Japan has banned the catch of U.S.-origin salmonoids by fishermen other than those authorized by the International North Pacific Fisheries Convention (INPFC) and enforces the ban vigorously.

The United States need not engage in disruptive and destructive legislation to prevent the high seas interception of its salmon. There already are sufficient legal remedies on the books. For one thing, as the United States has already declared in the Magnuson Act that salmon and steelhead trout of U.S. origin are U.S. property, anyone in unlawful possession can be prosecuted. As Japan, South Korea, and Taiwan recognize the U.S. claim of ownership, there is nothing to prevent a U.S. attorney from initiating legal action in those countries that would result in the seizure of the fish from a fish merchant, and the imposition of criminal and civil penalties. Possession of stolen property is a crime in most countries.

After one or two seizures, no fish merchant would risk selling American origin salmon.

Another available option is U.S. Coast Guard enforcement. Even though the U.S. Coast Guard may be constrained from boarding foreign vessels on the high seas, they are not constrained from close-up observation, videotaping violations, and taking evidence from nets in the water (fish are not considered to be the possession of a fisherman until they are landed on his decks). Such evidence can then be used to prosecute the violators in their own countries. Additionally, the very presence of a Coast Guard vessel or airplane would constrain the taking of U.S.-origin salmon.

If the taking of U.S.-origin salmon and steelhead trout on the high seas is considered to be such a big problem (though record American catches and profits suggest the problem may be exaggerated), the United States should take every action it can before seeking to force other countries to take actions that are beyond practical application. After all, even in the United States we believe that the apples that fall on our side of the fence belong to us, not to our neighbor who owns the tree. If the neighbor does not want to lose his apples, it is up to him to erect a net.

Isn't it just scapegoating to demand that other countries do for us what we will not do for ourselves?

THE U.S.-JAPAN DRIFTNET AGREEMENT

Notwithstanding the facts that: (a) the high seas squid driftnet fishery is outside of U.S. jurisdiction; (b) Japan already patrols the fishery to prevent retention of any incidental

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catches of U.S.-origin salmon; (c) Japan is vigorously enforcing the prohibition on retaining or selling unauthorized Japanese or Taiwanese-caught U.S. origin salmon or steelhead in its home ports or markets; (d) the driftnet squid fishing fleets are prohibited by the Japanese government from fishing in known areas of U.S. salmon migration, and (e) the Japanese government has limited the number of Japanese squid driftnet fishing vessels, the Japanese government on May 2, 1989 concluded an agreement with the United States to:

1. Initiate two research programs to measure the presence of salmonoids in the driftnet squid fishing areas, determine the extent of interception, if any, and determine the impact of squid driftnet fishing on marine mammals, other marine species, sea birds and the ecology;

2. Accept U.S. and Canadian scientists on board the Japanese squid vessels to observe the catch and carry out research;

3. Accept U.S. observers aboard the Japanese enforcement vessels;

4. Invite U.S. and Canadian scientists to participate in research aboard Japan's research vessel;

5. Notify the U.S. government of any third country fishing vessels that appears to be catching U.S.-origin salminoids.

All of the measures that the Japanese agreed to carry out are costly for both the government and the fishing vessels, yet they have voluntarily agreed to do them out of a spirit of friendship and cooperation. The United States, on the other hand, has not only prohibited the Japanese from fishing for fish surplus to U.S. needs in U.S. waters, but has refused to allow Japanese salmon fishermen to catch Asian-origin salmon in the U.S. 200-mile zone, in contravention of the International North Pacific Fisheries Convention (INPFC).

Because of political pressure from Alaskan and U.S. northwest interests, Commerce Secretary Mosbacher asked that the May 2 Japanese agreement be rejected and a new agreement be renegotiated. The Alaskan and northwest interests want a new agreement that would require the Japanese fishing vessels to carry position-indicating satellite transponders, put more U.S. observers on the Japanese vessels, and ban squid fishing activities in the northerly waters of the Pacific. All of these demands are both unnecessary and a direct infringement of Japanese national sovereignty. Both U.S. and Japanese scientists have already agreed that the numbers of scientists/observers provided for in the May 2 Japanese agreement are optimal for statistically reliable data collection and scientific analysis.

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JAPAN AND THE DRIFTNET ACT

The Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (**Driftnet Act**), calls for the Secretary of State, in consultation with the Secretaries of Commerce and Interior, to negotiate an agreement with each foreign government whose nationals conduct driftnet fishing in the North Pacific for (a) "statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded or lost by the foreign government's driftnet fishing vessels," (b) "effective enforcement of laws, regulations and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels."

The Secretary also is authorized under the Act to request information from foreign governments in regard to:

1. The number of vessels involved in the fishery;
2. The areas fished;
3. The length, width, and mesh size of the driftnets used;
4. The number of marine resources of the United States killed by such fishing.

Although the **Driftnet Act** is a severe infringement on the national sovereignty of the nations involved, and conflicts with commonly accepted ocean law, Japan had long been in compliance with most of its provisions. Its recent voluntary agreement would put Japan in compliance with all of the **Driftnet Act**'s provisions.

Japan is the only Pacific country to date that has adopted the measures called for by the **Driftnet Act**, as you can see from the accompanying table.

Thank you for your thoughtful consideration of the facts presented herein.

Yours sincerely,

Alan Macnow

Alan Macnow
Consultant
Japan Fisheries Association

Encl: Table, Japan's Compliance with Driftnet Act

JAPAN'S COMPLIANCE WITH DRIFTNET ACT

Provisions:	Compliance:	Agreement:
A. Monitoring		
Use Sufficient Vessels	Yes	New
Use U.S. Scientists	Yes	New
Use Japan's Scientists	Yes	Existing
Assess Salmonoids Killed	Yes	Existing
Assess Marine Mammals Killed*	Yes	Existing
Assess Sea Birds Killed*	Yes	Existing
Assess Other Fish Killed*	Yes	Existing
U.S. Scientists Judged Program Reliable	Yes	New
Japan's Scientists Judged Program Reliable*	Yes	Existing
B. Enforcement		
Effective Monitoring	Yes	Existing
Effective Detection of Violations	Yes	Existing
Collection & Presentation of Evidence	Yes	Existing
Report Penalties Imposed to the U.S.	Yes	Existing
Enforce Fishing Area Limitations	Yes	Existing
Enforce Fishing Time Limitations	Yes	Existing
Enforce Vessel Number Limitations*	Yes	Existing
Government Patrol of Fishing Areas*	Yes	Existing
Enforce Restrictions on Sales*	Yes	Existing
Require Vessel ID Numbers & Colors*	Yes	Existing
Require Vessel ID on Nets & Gear*	Yes	Existing
Require Report of 3rd Country Violations*	Yes	Existing
Require Daily Vessel Position Reports*	Yes	Existing
Require Retrieval of Loose Gear*	Yes	Existing
C. Impact Report		
Report Number Vessels Involved	Yes	Existing
Report Areas Fished	Yes	Existing
Report Length, Width & Mesh Sizes	Yes	New
Report Number U.S.-Origin Salmonoids Killed	Yes	New

* Not Specified by Driftnet Act

STATEMENT OF THE INDEPENDENT SHELLFISHING ASSN.

I. Introduction

These comments are being submitted by the Independent Shellfishing Association ("ISA"), a diverse group of individuals and corporations involved in the Atlantic surf clam and ocean quahog fishery. ISA was formed for the purpose of responding collectively to certain changes to the current Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery ("the FMP") that have been proposed by the Mid-Atlantic Fishery Management Council ("the Council"). ISA believes that the Council's actions in this matter have raised certain questions about the entire management council system.

Specifically, the Council is attempting to force onto the commercial fishing industry a radical regulatory scheme without proper justification and with total disregard for industry's views. While ultimately the National Ocean and Atmospheric Administration ("NOAA") will have to review and rule on any Council recommendation, the Council's attitude and the procedures it has followed are contrary to congressional intent. We are hopeful that NOAA will stop the Council when the agency realizes that the proposed regulatory change involves the conversion of a national resource into private property, an action which the Magnuson Fishery Conservation Management Act (the "Magnuson Act") never contemplated. Nevertheless, Congress should be aware that the Council system has some serious flaws which should be aired.

II. Background

At present, the Atlantic surf clam and ocean quahog fishery operates under Amendment #7 to the original FMP. This system has a number of basic components: (1) there is an aggregate annual catch quota for both surf clams and quahogs which may not be exceeded by the entire commercial fishing industry in any given year; (2) the annual quota is the only restriction on quahog fishermen, since quahogs are plentiful and the resource is not in danger of depletion; 1/ (3) a moratorium on surf clam fishing permits is in place, due to historical overfishing problems, and therefore the number of vessels participating in the surf clam fishery may not increase from year to year; and (4) to allow all fishermen an equal opportunity to catch surf clams while staying within aggregate quota levels, each permitted vessel may fish only 36 hours per fiscal quarter. Vessels may catch as many surf clams as they are able within this time-limited system.

1/ The Council has never maintained that there is a quahog shortage. In fact, until this year the annual quota for ocean quahogs had risen steadily, and recently had increased by approximately 1,500,000 bushels. This is clear recognition by NOAA that there is no depletion of the stock. Moreover, despite a totally open and unregulated fishery, the industry has not come close to catching the annual quahog quota in the past few years.

The present system has worked very well in managing the resource. Ocean quahogs are plentiful, and surf clam stocks, which were decimated ten years ago due to overfishing, have been completely replenished. 2/ By NOAA's own admission, the surf clam and ocean quahog FMP is one of the most successful management plans in existence.

Despite this success, a few problems admittedly remain in the industry. First, the surf clam fishery is somewhat overcapitalized. Second, the National Marine Fisheries Service ("NMFS") must work hard to enforce the existing regulations. Nevertheless, the present scheme has conserved the fishery and the enforcement problems have not been insurmountable.

The Council, notwithstanding the success of Amendment #7, has decided that changes must be made and that Amendment #8 is the answer. The enclosed public hearing draft of Amendment #8 (Attachment 1), dated December 28, 1988, included the following changes to the regulatory scheme: (1) a per-vessel "allocation" of both surf clams and quahogs would be established, which would give each permitted vessel ownership

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2/ According to the Council, total surf clam landings have increased to 79 million pounds of shucked meats in 1986 from a low of 35 million in 1979, evidencing a replenishment of the resource stock. The Council has stated that present stocks are adequate to support the fishery for the next ten years. Mid-Atlantic Fishery Management Council, Amendment #8 Hearing Draft at 18-19 (December 1988).

rights to a specified percentage of the annual quota; 3/ (2) each vessel's allocation (i.e., the percentage of the resource each vessel would own) would be based on a formula to be determined at a later date after further discussion of several alternatives; (3) surf clam allocations would be transferable on a limited basis for the first three years and transferable on an unrestricted basis thereafter; (4) quahog allocations would be transferable on an unrestricted basis immediately; (5) the time-base limitation system presently in existence for surf clams would be removed; and (6) no shucking of either quahogs or surf clams would be permitted at sea.

As discussed below, industry has been united in its vehement opposition to Amendment #8 since the plan was initially proposed in April 1988. Industry repeatedly has demonstrated that Amendment #8 creates many more problems than it solves, 4/ and that it results in grossly inequitable

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3/ For example, if a particular vessel's "allocation" equaled 10% of the annual quahog quota, that vessel would be entitled to catch 10% of the annual quota each year.

4/ For example, the Council's "enforcement cost" rationale for Amendment #8 is completely groundless. Although the current time-based limitation system may be difficult to enforce, the "cage tag" system proposed by the Council would be equally expensive. More importantly, Amendment #8 would create an elaborate regulatory system for quahogs where none exists presently. Consequently, total regulatory enforcement costs in this fishery will increase dramatically if Amendment #8 is enacted. This is merely one of many examples of how the proposed plan fails to achieve its stated objectives.

distributions of the resource. Despite this fact, and despite the fact that there are no conservation concerns addressed by the plan, 5/ the Council has pushed Amendment #8 through its procedural process toward eventual adoption. A vote to either reject the Amendment or approve it and send it to NOAA for final review is scheduled to take place next month. However, based on its previous actions, we can only assume that the Council will continue to support the plan and that the final vote will be a mere formality. In our view, this is runaway rulemaking by a body that has been totally unresponsive to those it is supposed to represent. This calls into question the Council's entire management process, and highlights the need for greater congressional oversight of the fishery management process.

III. Procedural History of Amendment #8

The Magnuson Act, 16 U.S.C. § 1801 et seq., created eight regional fishery management councils, including the Mid-Atlantic Council. These bodies were authorized to design and amend management plans with respect to each fishery in

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5/ As noted previously, there are no conservation concerns in either the surf clam fishery or the quahog fishery. Moreover, the proposed Amendment does not reduce aggregate annual quotas. Thus, not even the most ardent supporters of Amendment #8 could claim that there is a conservation rationale for the proposed regulatory changes.

their geographic range. The Act explicitly and implicitly requires councils to involve industry in the formation of management plans. For example, the Act states that each council "shall establish such . . . advisory panels as are necessary and appropriate to assist it in carrying out its functions . . . ." 6/ The Act also requires public hearings "to allow all interested persons an opportunity to be heard in the development of fishery management plans," and requires that all plans which restrict access to a fishery must take into account "historical fishing practices" as well as "present participation in the fishery." 7/ In addition, relevant provisions of the Code of Federal Regulations confirm that councils should take into account the views and recommendations of an industry advisory panel when formulating an FMP. 8/

In this instance, the Council has stated that it has listened to industry's concerns throughout the development of Amendment #8 and that "[t]here have been many meetings of the

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6/ 16 U.S.C. § 1852(g)(2).

7/ 16 U.S.C. §§ 1852(h)(3) and 1853(b)(6).

8/ See 50 C.F.R. § 601.22(e) (authorizing the Council to establish advisory panels for the purpose of obtaining the advice and counsel of "the people most affected by . . . Council matters of fishery management policy . . . ." The regulations also state that advisory panels shall be composed of those who are actually engaged in the harvest, processing or consumption of the resource being managed).

[industry] advisory panel . . . to attempt to develop a solution to the problem." 9/ This simply is untrue. Although the Council long ago established an industry advisory panel (the "Industry Panel"), the views of industry in general, and of the Industry Panel in particular, consistently have been ignored throughout the process of developing Amendment #8. Indeed, the response of the Council, and of the Council's professional staff, to the efforts of the Industry Panel in this matter has consisted of little more than an effort first to abolish it, and then to undermine its ability to speak on behalf of the industry.

The continuing effort to prevent the Industry Panel from participating in the development of Amendment #8 apparently was motivated by the Council staff's recognition that the Panel, with virtual unanimity, opposed both the concept of a resource allocation and the concept of unlimited consolidation of surf clam permits. 10/ The Industry Panel made its preferences clear as early as the winter of 1987, at a Council meeting in Atlantic City, when it reported to the Council its recommendation for continuation of the present time

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9/ Mid-Atlantic Fishery Management Council, Amendment #8 Hearing Draft (Attachment 1) at 12.

10/ Both of these concepts lie at the heart of Amendment #8.

based regulatory system for surf clams, in conjunction with a limited permit consolidation plan to address the industry's overcapitalization concerns. 11/

Although the Council listened politely to the Industry Panel's recommendations, no further input was requested. It soon became apparent that the Industry Panel's recommendation was at odds with the Council Staff's view that an allocation system with unlimited consolidation would best solve the industry's economic problems.

The ability of the Industry Panel to provide further advice and influence effectively was laid to rest in the fall of 1987, when the Council Chairman announced his intention to abolish the Industry Panel because, in his view, its services were no longer needed. In response, the Industry Panel Chairman objected in writing to the proposed abolition. The Council never again requested a meeting of the Industry Panel in connection with the development of Amendment #8, and has not sought its input at any time since the announced intention to abolish the Panel in the fall of 1987.

11/ Limited consolidation of permits would allow vessel owners to combine two surf vessel clam permits onto a single vessel. Vessels with combined permits would then be allowed to take twice as many surf clam trips as a single permit vessel. This scheme would enable boat owners to retire half of their surf clam vessels, thus reducing overhead, improving efficiency, and greatly reducing overcapitalization.

Nevertheless, although in a less organized fashion, industry continued to express its views to the Council throughout 1987 and early 1988. In the spring of 1988, at a Council meeting in Hampton, Virginia, the Council's staff attempted to induce the Council to adopt a particular allocation formula as the "preferred alternative" for Amendment #8. Industry participants attended that meeting in large numbers and spoke against this proposal with a virtually unanimous voice. As a result, the Council declined to endorse the proposed allocation. Industry's hope that its views finally were being considered, however, was short-lived.

After the Hampton meeting, the Industry Panel attempted to help formulate a modification of the current regulation scheme which would both address the Council's concerns and receive industry support. An open meeting of the Industry Panel was held in Philadelphia in June 1988, to which all industry participants were invited. The Chairman of the Council's Surf Clam Committee was invited to the meeting, and notice of the meeting also was provided to the Chairman of the Council and to the Executive Director of the Council's staff.

Incredibly, the Executive Director of the Council's staff, Mr. John Bryson, rejected this attempt by industry to work with the Council to reach a consensus on this issue. Mr. Bryson wrote to the Industry Panel and advised that the "proposed meeting was not requested nor cleared through the

Chairman or Executive Director as required," and therefore a report of the meeting would not be received by the Council. 12/ The Industry Panel nevertheless conducted its meeting; only one Council member was present and no representatives from the Council's staff attended. Approximately 25 to 30 individuals, representing the vast majority of vessels in the industry, attended the meeting and voted to oppose allocation and to urge the Council to develop instead a limited license consolidation plan to address overcapitalization concerns.

The Council's next meeting was in July 1988. At that meeting, the Council's staff again presented to the Council a draft of its proposed Amendment #8. To industry's surprise, the proposal virtually was identical to the plan rejected by the Council in the wake of industry opposition the previous April. The Council's staff simply had disregarded the Council's prior vote and recycled the identical plan with minor cosmetic changes. Industry again spoke out vehemently against the proposal, but the Council ignored these remarks and voted to send the staff's proposal to public hearing.

12/ A copy of the letter from Mr. Bryson to the Industry Panel is enclosed as Attachment 2.

The degree to which the Council ignored industry's views in the development of Amendment #8, and in the decision to send the proposed Amendment to public hearing, was reflected in a letter to the Council's Chairman from Mr. Pete Jensen, Council member and Chairman of the Council's Surf Clam Committee. 13/ This letter, which was read into the record at the Council's July 1988 meeting, acknowledged that industry did not support proposed Amendment #8, and that "an act of bad faith [had been committed] by running rough-shod over the industry['s] views." Mr. Jensen also acknowledged that the Industry Panel had been ignored and stated that "[t]he very purpose (and charge) of the [industry] advisory panel was to work closely with the committee and the Council to develop Amendment #8." Mr. Jensen expressed particular irritation with the Council staff's Executive Director, Mr. Bryson, for "vigorously defending the staff position . . . and being unwilling to acknowledge industry views." In closing, Mr. Jensen noted that "[i]f we adopt this alternative in the face of the industry opposition we are abandoning the very tenants of the Council and the democratic system." Despite Mr. Jensen's letter, the Council approved the staff's proposal

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13/ A copy of the letter from Mr. Jensen to the Council's Chairman is enclosed as Attachment 3.

and Mr. Jensen has since been removed as Chairman of the Council's Surf Clam Committee.

In February and March 1989, the Council held four public hearings on proposed Amendment #8. The vast majority of the industry spoke either directly or through representatives at these hearings. Of the approximately 40 speakers, _not one_ expressed support for a quahog allocation system and _not one_ expressed support for the proposed prohibition against shucking at sea, two of the three major components of Amendment #8. Two speakers expressed qualified support for the third major component, a surf clam allocation; the remaining speakers _all_ were opposed to Amendment #8 in its entirety. Even these numbers do not tell the entire story, since many of the participants who spoke against the proposed Amendment represented a large number of industry participants. For example, ISA and a sister group, the United Shellfishermen's Association, alone represent approximately two-thirds of the industry, and representatives from both organizations spoke in total opposition to the proposed Amendment on behalf of their memberships. In addition, written comments submitted by industry participants for inclusion in the public hearing record expressed opposition to the Amendment in the same proportion as the oral comments. 14/

To industry's shock and dismay, only one member of the Council, Mr. Lee Anderson, was present at three of the four public hearings. At the fourth, two additional Council members, out of a total of 19 voting members, attended. Nevertheless, ISA was hopeful that after such one-sided public hearings, the Council at last would rethink its plans to force an allocation system down the throats of an unwilling industry. However, at the Council's April 1989 meeting in Norfolk, Virginia, Mr. Anderson announced the intention of the Council's Surf Clam Committee to present a revised plan for Council approval by June, thus rejecting the possibility of scrapping Amendment #8 and working with industry to develop a viable alternative. Although some revision in the Amendment has been promised, the clear implication of Mr. Anderson's remarks is that the "revised" plan will recommend an allocation system with unlimited license consolidation, and that this final proposal merely will fine tune the allocation formulas presented in the previous draft. Once again, the voice of industry appears to have been ignored.

14/ A copy of the ISA's written and oral comments are enclosed as Attachment 4. These comments are representative of the views of the vast majority of active industry participants, as presented to the Council at public hearing.

It is difficult to comprehend completely the impact of proposed Amendment #8 on independent fishermen and other industry participants without a full understanding of the proposal and its intricacies. Unfortunately, it would require a great deal of explanation to describe in detail the plan and its effects, and this is an inappropriate forum for an extended discussion of any particular regulatory scheme. For the purposes of this hearing, however, it is sufficient to understand that the proposed Amendment could leave the entire surf clam resource in the hands of very few large fleet owners, and probably would put all small independent surf clam and quahog fishermen out of business. To fishermen who have been working in the industry for 20 years or more, and who instantly would be bankrupt if the proposed Amendment is adopted, the Council's attitude in this matter has been a Kafkaesque nightmare. This kind of runaway rulemaking suggests that the Council process does not guarantee appropriate input from industry and that, at least in this instance, much more congressional oversight is needed.

IV. Privatization of Natural Resources

One of the most disturbing aspects of Amendment #8, and an aspect that should be of great concern to Congress, is that the Amendment proposes to privatize the U.S. surf clam and ocean quahog resource, and to give full ownership rights in this resource to individuals and corporations. These private ownership interests would be received free of cost, with no payment flowing to the government or taxpayers. The Council believes, incorrectly, that the Magnuson Act's use of word "allocation" authorizes the Council to "give away" a natural resource to private fishermen in this manner.

In a number of instances, the Magnuson Act and its regulations refer to the possibility of implementing "allocations" as a means of managing fisheries. The term "allocation" is defined in the relevant regulations as "a direct and deliberate distribution of the *opportunity to participate* in the fishery. . . ." 15/ This definition is incorporated into the Magnuson Act, which authorizes the allocation of "fishing privileges" under certain specified conditions. 16/

As this language demonstrates, the term "allocation," as used in the Magnuson Act and its regulations, refers only to the distribution of fishing *privileges*, and not to the distribution of ownership rights in the resource itself. Thus, throughout the Magnuson Act's regulations, the term "privileges" is utilized in every instance in which the term

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15/ 50 C.F.R. § 602.14(c)(1) (emphasis added).

16/ 16 U.S.C. § 1851(a)(4).

"allocation" is employed. For example, 50 C.F.R. § 602.14(a) establishes certain standards which must be met "if it becomes necessary to allocate fishing privileges." Section 602.14(c) describes instances in which a "FMP may contain certain management measures that allocate fishing privileges. . . ." Section 602.14(c)(3) requires that an allocation of fishing privileges must be fair and equitable. . . ." Section 602.14(c)(3)(i) requires that "an allocation of fishing privileges should be rationally connected with the achievement of [optimal yield]. . . ." And Section 602.15(c) describes a system for limiting access as "a type of allocation of fishing privileges. . . ."

In short, the drafters of the Magnuson Act authorized allocations of privileges or opportunities to participate in the fishery. Nowhere does the Magnuson Act, or its interpreting regulations, suggest that the term "allocation" was intended to refer to the direct distribution of the resource itself among industry participants. This is demonstrated further in Appendix A to Subpart B of the regulations. This Appendix provides numerous examples of both "indirect" and "direct" allocation schemes that are permissible under the regulations, yet none of the examples involve anything more than a limitation on fishing privileges.

The Mid-Atlantic Council, however, believes that the Magnuson Act's use of the term "allocation" authorizes the distribution of a natural resource into private hands. Under proposed Amendment #8, each permitted surf clam and quahog vessel would be granted ownership of a permanent, fixed percentage of the aggregate annual quota. Without lifting a finger to catch clams or paying a cent to the government, a vessel owner would have full ownership rights to his "allocation" of the resource -- each year he could decide to catch it, sell his rights to catch it, or choose to leave it in the ocean.

Congress may wonder why so many fishermen oppose a plan that would provide them, at no cost, with permanent ownership rights in a portion of the resource. Simply put, many fishermen are opposed to the plan because it is anti-competitive and un-American. Once a vessel receives its allocation, no amount of capital expenditure, hard work, or innovation ever would increase the vessel's allocation. The only way for a fisherman to improve his competitive position would be to purchase additional allocations. Thus, the proposed plan favors wealthy fleet owners and processors, and punishes hard working, non-wealthy independent fishermen. Moreover, the proposed allocation formulas are so arbitrary and inequitable that in many cases a vessel's yearly allocation will be less than it can catch in a single trip. Under the Council's proposed allocation formulas, many fishermen will be unable to catch enough fish to support their capital investments and they will be put out of business immediately.

In addition, the proposed allocation system creates a number of dangerous possibilities for the commercial fishing industry as a whole. Under the proposed plan, a single individual or corporation could monopolize the industry by purchasing all of the surf clam or quahog allocations. 17/ Moreover, this "sole owner" could be any wealthy company such IBM or any wealthy individual such as Donald Trump -- under Amendment #8, allocation purchasers need not demonstrate any prior participation in the fishery. As a practical matter, the "sole owner" also could be a foreign-controlled corporation. Foreign corporations with deep pockets already have purchased American clam processors and have made other inroads into U.S. fisheries. Nothing in the proposed Amendment could prevent an American company from "fronting" for a foreign corporation and purchasing the entire resource. In short, Amendment #8 may have a number of devastating effects on fisherman and on the industry as a whole, many of which have not been anticipated by the Council.

17/ The Council apparently would rely on seldom enforced antitrust laws to prevent the consolidation of the entire resource into the hands of a single owner. Even if such laws would prevent sole ownership of the resource, clearly a small number of individuals or companies would be able to own or control the entire resource.

Given the potentially disastrous effects that may result from Council's "allocation" system, it is not surprising to discover that no other American fishery has been regulated by means of a direct distribution of ownership rights in the resource, prior to harvesting, as the Council now proposes in Amendment #8. The drafters of the Magnuson Act surely never contemplated that the term "allocation" would be interpreted in such a manner as to allow this privatization, and Congress now should clarify the statutory language to prevent management councils from giving away public fisheries in this instance or in the future.

V. Conclusion

The Independent Shellfishermen's Association greatly appreciates the opportunity to present written testimony at these hearings. For a large number of reasons, we believe that Amendment #8 to the Atlantic Surf Clam and Ocean Quahog FMP is illegal, inequitable, and wholly unnecessary to achieve the legitimate goals of the Council. [18] For the purposes of this hearing, we have focused on two aspects of the controversy -- the degree to which the Mid-Atlantic Council has, inappropriately, ignored industry input, and the fact that the

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[18] See comments of ISA (Attachment 4).

Council is proposing to privatize a natural resource through a tortured interpretation of the Magnuson Act. We respectfully request more strict oversight of the council process in general, and the Mid-Atlantic Council in particular, so that industry will be guaranteed a forum for its views. We also respectfully request that Congress clarify the meaning of "allocation" in the Magnuson Act to prevent attempts by runaway councils to give private individuals ownership rights in national, public fisheries.

STATEMENT OF CONCERNED SCIENTISTS ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

William W. Fox, Jr., Ph.D., University of Miami, Miami, Florida with David G. Ainley, Ph.D., Point Reyes Bird Observatory, Stinson Beach, California; Richard H. Backus, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, Massachusetts; Robert L. Brownell, Jr., Ph.D., U.S. Fish and Wildlife Service, San Simeon, California; John J. Burns, Fairbanks, Alaska; Douglas G. Chapman, Ph.D., University of Washington, Seattle, Washington; Richard A. Cooney, Ph.D., University of California, Santa Cruz, California; Daryl P. Domning, Ph.D., Howard University, Washington, D.C.; Robert Elsner, Ph.D., University of Alaska, Fairbanks, Alaska; William E. Evans, Ph.D., Dean, Texas Maritime College, Texas A & M University, Galveston, Texas; Francis H. Fay, Ph.D., University of Alaska, Fairbanks, Alaska; Joseph R. Geraci, V.M.D., Ph.D., University of Guelph, Guelph, Ontario, Canada; Daniel Goodman, Ph.D., Montana State University, Bozeman, Montana; Ancel M. Johnson, Heckla, South Dakota; Murray L. Johnson, M.D., University of Washington, Seattle, Washington; Karl W. Kenyon, Seattle, Washington; Burney J. LeBoeuf, Ph.D., University of California, Santa Cruz, California; Jack W. Lentfer, Homer, Alaska; George A. Llano, Ph.D., Naples, Florida; Donald K. MacCallum, Ph.D., University of Michigan, Ann Arbor, Michigan; Marc Mangel, Ph.D., University of California, Davis, California; Bruce R. Mate, Ph.D., Oregon State University, Newport, Oregon; James G. Mead, Ph.D., Smithsonian Institution, Washington, D.C.; William Medway, Ph.D., D.V.M., University of Pennsylvania, Philadelphia, Pennsylvania; James C. Nofziger, Ph.D., Canoga Park, California; Kenneth S. Norris, Ph.D., University of California, Santa Cruz, California; Daniel K. Odell, Ph.D., Orlando, Florida; Jane M. Packard, Ph.D., Texas A&M University, College Station, Texas; William F. Perrin, Ph.D., National Marine Fisheries Service, NOAA, La Jolla, California; Katherine Ralls, Ph.D., San Simeon, California; John E. Reynolds, III, Ph.D., Eckerd College, St. Petersburg, Florida; Sam H. Ridgway, D.V.M., Ph.D., San Diego, California; John H. Ryther, Ph.D., North Falmouth, Massachusetts; Victor B. Scheffer, Ph.D., Bellevue, Washington; William E. Schevill, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts; Donald B. Siniff, Ph.D., University of Minnesota, Minneapolis, Minnesota; Tim D. Smith, Ph.D., Woods Hole, Massachusetts; Robert B. Weeden, Ph.D., University of Alaska, Fairbanks, Alaska; Jesse R. White, D.V.M., Dunnelon, Florida; Forrest G. Wood, San Diego, California

We are concerned about the effectiveness of the Magnuson Fishery Conservation and Management Act (MFCMA) in properly conserving our Nation's marine fishery resources. We are also concerned about the impact that this lack of effectiveness has had and, unless rectified, will continue to have on the Nation's marine mammal populations. The "State of the U.S. Fisheries" report prepared by the National Oceanic and Atmospheric Administration (NOAA), the American Fisheries Society's Harville Report on Federal Fisheries Responsibilities, the NOAA Fishery Management Study, and the Report of the NOAA King Mackerel Review Committee lend strength to these concerns.

Preventing overfishing and allocating finite resources are two of the most critical fishery problems faced today. Virtually all of the important finfish stocks managed under the MFCMA off the northeastern, southeastern, and Gulf of Mexico coasts of the U.S. are either overfished or on their way to that condition. It appears that the Pacific and Bering Sea fisheries will ultimately be depleted as well if the management practices under the MFCMA are not vastly improved. From the degree of overfishing, it is obvious that fishing effort and capital investments in vessels and gear are just too high.

New and effective approaches are badly needed. Based on our considerable experience with fisheries and marine mammal conservation and management, we offer the following thoughts on promising ways to achieve these goals.

In contrast to the MFCMA, the Marine Mammal Protection Act (MMPA) is meeting the goal established by Congress. It is allowing the recovery of many marine mammal populations to their optimum sustainable levels and keeping many more populations within their optimum sustainable ranges. Those that are known to be declining are for the most part affected directly or indirectly by a commercial fishery. Interactions among fisheries and marine mammal populations have increased, and, because of uncertainties created by incidental taking and competition, modifications had to be made during the recent reauthorization of the MMPA.

While the goal of the MMPA is protection and that of the MFCMA is optimum use, four features of the MMPA that have contributed significantly to its success are generally applicable to the sound management of any exploited living natural resources. Incorporating these into the MFCMA would help resolve some of the MFCMA's more serious problems including overfishing, depletion, and ecologically-based or direct physical conflicts with marine mammals. The features are:

(l) an ecosystem perspective on management;
(2) conservative management under uncertainty;
(3) a threshold beyond which exploitation ceases; and
(4) independent oversight of the MFCMA implementation.

With respect to these, we make four recommendations.

ECOSYSTEM MANAGEMENT

The MMPA declares, despite its strongly conservationist goal, that the primary objective of marine mammal management is the maintenance of the health and stability of marine ecosystems. We believe that the sense of this objective should also be embodied in the Magnuson Act as a mechanism to prevent overfishing of fish stocks and in order to minimize marine mammal conflicts. An ecosystem approach to management would also help alleviate habitat degradation, one factor aggravating the loss of fishery resources through overfishing.

Marine ecosystems are complex, and variations in time and space of their constituent elements are natural occurrences. Interventions by man, however, can and do have stabilizing or destabilizing influences on the natural variability and cause or accelerate severe shifts in the composite ecosystem. From a fishery perspective, one need only look at the histories of the great trawl fisheries in the Gulf of Thailand, off West Africa, and off New England to observe the empirical evidence of man's destabilizing influence.

Great shifts in the species composition of major fishing grounds are associated with intense rates of exploitation on one species or group of species to the point where they become a nearly insignificant part of the ecosystem. The subsequent general observations are that, in adjusting to massive fishery removals, other species, usually of much lower value, increase in abundance in place of those that were depleted. While these phenomena and increases in fishing intensity are concomitant, some scientists argue that the shifts are simply related to naturally occurring changes in the physical environment that are also correlated in time. It is virtually impossible to disprove either hypothesis retrospectively, but we believe that the argument is moot as far as sound management is concerned, i.e. the proper reaction of management is much the same in either case.

If the depletion and species composition shift are indeed independently caused by excessive fishing, then lower rates of fishing will mitigate this form of variability and, of course, the associated economic and social dislocations in the seafood and recreational fishing industries. Lower rates of fishing mean less fishing effort, less capitalization in the harvesting sector, and fewer direct conflicts with marine mammals. Fortunately, lower rates of fishing, when properly applied, do not necessarily mean substantially lower year-to-year harvests. On the other hand, if a decline in the target species is ultimately inevitable due to natural forces beyond the control of management, then lower fishing rates will most likely lessen the rate of decline, lengthen the period of transition, lessen the associated social and economic costs and lessen direct marine mammal conflicts. Lower rates of fishing will allow for a better bridging of the gap until an increase, even a fortuitous one, in the recruitment of young begins increasing the target species' population once again.

In cases where there appear to be direct ecological relationships among the abundances of a few species, one or more of the species may be much more valuable for seafood, recreation, or as unique forage for other important species, than others. By substantially decreasing the abundance of these other species, the more valuable species may flourish to an even greater extent than otherwise. To some, this may imply that significant overfishing of the less valuable species is desirable and warranted. While we strongly support an ecosystem perspective in managing marine populations, it is essential that there be a requirement that it be proven, in each situation, that the knowledge and understanding of such ecological relationships are sufficient before allowing the purposeful overfishing of any species or stock.

We therefore recommend that the Magnuson Act be revised to promote a total ecosystem perspective in managing the Nation's fish stocks, taking into account the protection of essential habitat, including the habitats essential to early life histories, and consideration of marine species neither harvested nor consumed. Under this perspective, management must be directed towards obtaining larger standing stocks (i.e. generally lower fishing rates) than has occurred under the Magnuson Act to date. Exceptions from these general principles must bear a statutorily described burden of proof rather than be the rule.

CONSERVATION ETHIC

In placing a general moratorium on the taking of marine mammals, the MMPA also allows for limited exceptions to be made under certain circumstances and according to stringent criteria. Most important is that any permitted taking must not disadvantage the affected marine mammal populations. Furthermore, the burden of proving that a proposed taking would not be to the disadvantage of the marine mammal population in question is placed on those who wish to do the taking. This management ethic embodies the strongly conservationist intent of Congress. Even so, Congress has made a few limited exceptions by granting a general permit for the tuna fishery and by enacting a five-year incidental take authorization for commercial fisheries, subject to certain conditions. Nevertheless, the MMPA is successfully meeting its goal and objectives.

A major element of any management ethic or philosophy is how to predict the outcomes of potential or alternative management actions. The process of accounting for uncertainty is critical to marine resource management. There is uncertainty in the status of every fish stock, in the factors that have caused the existing status, in the efficacy of management measures chosen to rectify the causes via regulation, and in the regulation-implementing system of compliance, enforcement, and penalties. Uncertainties can sometimes be expressed quantitatively, for example as a confidence interval about the estimated Acceptable Biological Catch (ABC) or more frequently as a range of estimated ABC's. Sometimes, they can only be expressed as mere qualitative estimates or not in any direct manner. In other words, chance is highly involved in whether management is successful or not.

Generally, a conservation ethic requires that decisions be made in favor of the long term rather than the short term. Doing so significantly improves the chances of meeting the objectives of fishery management plans assuming the objectives include preventing overfishing, bringing about the recovery of depleted fisheries, maintaining populations at levels for optimum use, or ensuring that future options for the resources will exist. The opposite ethic, call it the exploitation ethic, where decisions favor the short term, virtually guarantees that overfishing will eventually occur, that depleted fisheries will not recover except possibly in the very long term, and that the optimum use attained in a short, transitory manner, will be followed by severe economic and social dislocations. The spotty record of managing our Nation's fisheries speaks for itself. The exploitative management ethic has prevailed in fact, though not necessarily in name, in some fisheries since 1976.

The MFCMA's process has failed to act with reasonable prudence as overly optimistic fishery management plans have been developed in the face of inevitable uncertainty in fishery data and predictions on the effects of management. The operational management ethic prevailing since 1976 has frequently and inappropriately placed the burden of proof on scientists to demonstrate the effects of fishing and has insidiously (whether purposefully or not) ensured that they have had insufficient resources to meet that burden. This has resulted in wide ranges for the estimated ABC's and in Council recommendations with Secretarial approvals of quotas or Total Allowable Catches (TAC's) from the high end of those ABC ranges, if indeed confined to that range. This has occurred even when some Councils have been confronted with reasonable evidence of overfishing and the need for recovery.

Embodiment of a conservation ethic in the Magnuson Act will be essential as fishery managers seek to allocate limited fishery resources among competing domestic fishing interests. Only by placing the burden of proof on those wishing to exploit exhaustible resources can the necessary protections against overfishing called for by the National Marine Fisheries Service be adequately incorporated into the MFCMA.

We therefore recommend that the Magnuson Act be amended where necessary to ensure that the conservation ethic of wise use prevails in meeting the Act's goal of providing the greatest overall benefit to the Nation, that the paramount concern of management be the continuing health and abundance of the public's resources, and that management faced with uncertainty shall favor the long term through a statutorily defined burden of proof that is consistent with proposed levels of fishing effort.

THRESHOLD

The MMPA proscribes issuing a permit for any taking from a stock that is below the lower limit of its optimum level. A threshold is thereby established. This threshold is appropriately set at a fairly high level (i.e. at 60% or greater of the population size at the ecosystem's carrying capacity). Such an approach is warranted because these species have relatively low rates of production and can be easily disadvantaged by inappropriate levels of sustained exploitation. This threshold is necessary to ensure against uncertainties about the marine mammals and their ecosystem and the inevitable vagaries of any regulatory scheme allowing some taking.

Marine finfishes and shellfishes can withstand a relatively high rate of exploitation. In fact, if subjected to such exploitation, they appear to diminish to the point of economic extinction and directed fishing stops before they disappear completely. There is no record of marine fish or shellfish species extinctions from human exploitation. This fact, of course, is used by the proponents of the exploitation ethic to justify their philosophy. They argue that no damage can be done to fish stocks in the long term regardless of how long that is. However, this approach fails to acknowledge the severe economic and social dislocations that inevitably occur along this path and the public burden of stringent regulations and costs of recovery associated with these dislocations. Economists have shown that, at some point in the course of overfishing and eventual depletion, it becomes economically unacceptable to take corrective actions that are sufficient to return the resource within a reasonable period of time to a state where optimum yield is produced in a long term sense. A threshold should be established at some level prior to reaching this economic point of no return. The appropriate threshold will depend upon and vary with the life histories of the species and the economics of the fisheries.

By establishing a harvest threshold, in addition to the delineation of overfishing, management actions are conceptually and operationally segmented into three categories: (i) the initial or sustained management category in which extracting optimum yield is the main management

objective and in which the resource level and the exploitation rate are appropriate to doing so; (ii) the overfished category, in which a program of recovery to the resource level and exploitation rate appropriate for extracting optimum yield is imposed as the main objective; and (iii) a depleted category, delimited by the threshold, in which harvesting for any purpose is prohibited.

We therefore recommend that, to improve ways of protecting, managing, and developing our Nation's living marine resources, the Magnuson Act be amended to require the establishment of a harvest threshold for fish stocks managed under the Act. The threshold must be established at an appropriate level where the available data along with generally accepted biological, ecological, statistical, economic, and social principles demonstrate with reasonable certainty that from which the fish stock can recover to produce an optimum yield within a time period consistent with the actual body of available data. As a corollary, "overfishing" needs to be statutorily defined in the Act.

INDEPENDENT OVERSIGHT

Implementation of the MMPA is overseen by an independent, national board, the Marine Mammal Commission. The Commission consists of three Presidentially-appointed Commissioners, a ninemember Committee of Scientific Advisors and a small but effective staff. The success of the MMPA is due in large part directly to the activities of the Commission.

The MFCMA has the same key features that required an independent board to oversee implementation of the MMPA. First, the responsibilities for carrying out the provisions of both laws are fragmented among several departments and agencies of the Executive Branch. Second, the appropriate use and allocation of the living resources is intensely controversial and subjected to a variety of political pressures.

Fragmented responsibilities call for coordination. In the case of the MFCMA this includes the Departments of Commerce (data collection, research, management plans and enforcement), Transportation (enforcement), State (international relationships), Interior (habitat quality and quantity), and Defense (habitat quality and quantity) as well as the Office of Management and Budget (fiscal resources and operating procedures). A representative from each department, except Defense, is assigned to each of the eight fishery management councils. While these representatives can and do transmit departmental policy and bring back to the department the needs expressed through the council, upper level coordination among the responsible agencies is not met by this process. Since each agency has its own priorities, usually those for which the agency has either total or lead responsibility, responsibilities deemed important by other agencies are inevitably relegated to a secondary position.

The first national standard of the MFCMA proscribes overfishing, yet many of our Nation's fisheries are characterized by overfishing. A major reason is the competition for the use of our fisheries, whether it be between seafood and recreational interests or between today and the future. This competition, intensified by the regional nature of the MFCMA's fishery management process, results in extraordinary political pressures being brought to bear on the agency with primary responsibility. A national board could help to steer a steady course under these circumstances.

Key factors in the success of a national board are the competence of its members and staff, the breadth of its responsibilities and adequacy of its authority, and the degree of its independence. In the case of the Marine Mammal Commission, the MMPA statutorily requires that the Commissioners and Scientific Advisors meet certain standards of knowledge; that appointments to the Commission be confirmed by the Senate; that Commissioners and Scientific Advisors be free of financial conflicts; that the Commission's decision-making process be based upon thorough consultation with the Committee of Scientific Advisors; and that all appointments to both bodies have the approvals of the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences. With appropriate modification, this would be a reasonable model for any board with oversight responsibilities for the management of living natural resources.

Among other things, an MFCMA oversight board should be directed to:

1. conduct ongoing reviews of the status of national fisheries, their data collection and research programs, their enforcement programs, and their management plans;

2. make recommendations to the Secretary of Commerce regarding the conservation, management, enforcement, research, and data collection programs and on fishery management plans;

3. make recommendations to the Secretary of State on appropriate policies for managing the international aspects of our national fisheries as well as for addressing high seas issues of importance (e.g. tuna fisheries, driftnet fisheries, etc.);

4. make recommendations to the Secretary of Transportation on appropriate enforcement policies and practices for the Coast Guard;

5. make recommendations to the Secretary of the Interior on research programs and management of the marine habitat;

6. make recommendations to the Secretary of Defense on measures to mitigate the effects on marine and estuarine habitats of projects undertaken by the Corps of Engineers;

7. make recommendations to the Director, Office of Management and Budget, on fiscal resources and administrative procedures;

8. submit an annual report to Congress;

9. maintain a separate staff and have an independently authorized and appropriated budget; and

10. make all reports and recommendations a matter of public record.

In addition, the enabling legislation should provide that (1) recommendations from the board must be responded to within 90 days of their receipt and (2) for those recommendations not followed or adopted in full, the agency must provide a detailed explanation in writing as to why they were not.

We therefore recommend that an independent board be established to oversee the implementation of the Magnuson Act.

STATEMENT OF EARTHTRUST

INTRODUCTION AND OVERVIEW

In the last ten years, large fishing fleets operating out of East Asia have dramatically increased the scope of their activities in international waters where they employ one of the most destructive fisheries technologies ever devised by humankind. The explosive development of a fishing technique known as pelagic driftnetting has undergone widespread and increased application within virtually every major marine ecosystem in the world. The available evidence suggests that the use of pelagic driftnets to harvest fish stocks of the open ocean is a destructive, wasteful and wholly inappropriate method of fishing, and that international action is required immediately if we are to avert the threat of ecological and commercial crisis within the world's oceans.

Each year, tens, if not hundreds of thousands of dolphins, porpoises, seals, and other marine mammals are caught and killed in driftnets deployed to harvest stocks of tuna, squid and billfish from the high seas. In addition, hundreds of thousands of seabirds and vast quantities of non-target fish species fall victim to the effects of this indiscriminate technology. Because of the nature of the fishery, which utilizes long sections of strong nylon mesh deployed as hanging curtains in the water, even the great whales are not immune from capture and death in these nets. Unexplained decreases in the populations of wildlife species near fishing areas have marked the driftnet fleets as a likely responsible factor contributing to these species depletions.

Further concerns also arise from the effects of these fisheries on future harvests of marine resources, the disruption of other fisheries which depend on many of the same commercial species impacted by the driftnet fleets, and the ecological consequences stemming from widespread use of an indiscriminate and wasteful method of fishing. Substantial evidence has also been gathered indicating that incidental takes of non-target fish species may be unacceptably high, and that intentional takes of other commercial species, e.g., albacore and salmon, could not only compromise the future of entire regional fisheries, but violate national laws within countries that claim exclusivity of harvest by virtue of soverignty over spawning grounds and recognition of certain stocks as national living marine resources.

Because of the limited amount of data available on the activities of the driftnet fleets and the lack of information on historic levels of species populations within marine ecosystems, it has been virtually impossible to assess the real impacts posed to date by these fisheries. Despite this, consideration of the available and historic data viewed in conjunction with what is known about population dynamics for the affected species suggests overwhelming evidence of an ecological catstrophe in the making. The activities of the driftnet fishery represent the first time in history that a commercial fishing technology has been able to threaten the carrying capacity and sustainability of a deepwater ocean ecosystem.

It is hoped that it will become immediately apparent to national and international policymakers that prompt action to address this problem on a global scale is urgently needed. Alternatives to driftnet fishing should be implemented without delay, and a phase-out on the use of driftnet technology should be carried out as expeditiously as possible. This briefing document, prepared by Earthtrust, with advice and comments from Earth Island Institute, Greenpeace, National Marine Fisheries Service, Pacific Marine Fisheries Commission and outside scientists, represents our assessment of this problem and the consequences associated with its continuance. It is hoped that this document will serve as a reference source and basis for concerted discussion and action on national and international levels. Proposals and suggestions for consideration follow the main body of the text.

BACKGROUND

Driftnetting, also referred to as gillnetting, is a fisheries technique that has been in use since at least the early part of the twentieth century. The advent of nylon plastic gillnets however, which prompted the development of today's vast pelagic driftnet fisheries, did not occur until after World War II. The first fisheries to utilize large-scale plastic gillnets were the Japanese mothership and land-based salmon driftnet fisheries operating in the Bering Sea and the North Pacific under the INPFC Treaty approved in 1952. The UNFAO has also distributed driftnet technology to a number of developing countries in order to provide an inexpensive means of harvesting marine protein.

Driftnet fishing received its first widespread commercial use in the United States in the Gulf Coast area. The severe impacts on coastal fisheries resources in the area prompted Texas to outlaw drift-gillnets from its state waters. Driftnet less than 1 1/2 miles in length are known as gillnets, and are still allowed for commercial usage by US fishermen in some states. Because of complaints by fishermen employing traditional methods of fishing (i.e., pole and line, longline, trolling, etc.) over depleted marine resources and unfair competition, as well as the concerns voiced by conservationists over the impacts on wildlife, efforts are currently underway in California and several East Coast states to develop similar legislation to that passed by Texas.

The recent development of fisheries relying exclusively on large scale commercial driftnet operations in international waters appears to have begun in the late 1970's off the coast of Japan. Many of the driftnet vessels that had been involved in Japan's salmon fisheries in the north were displaced and began targeting squid in Japanese coastal areas. The use of driftnetting increased dramatically, largely because of its effectiveness and the relatively low costs involved in its commercial application.

With the exception of the pelagic salmon fisheries, high seas commercial driftnet fisheries were virtually non-existent until ten years ago. Since then the driftnet fleets have grown to the point where they are now acknowledged as the largest fishing fleets in the world. Presently it is estimated that some 1400 vessels participate in the annual North Pacific fisheries on red squid, albacore and billfish. Comprised almost exclusively of vessels from Japan, Taiwan, and South Korea, these vessels collectively deploy an estimated 30,000 miles of net each night during the fishing season — enough net to circle the planet at the equator and still cross the Pacific Ocean.*

In addition to high seas driftnet fisheries which take place well offshore in areas of open ocean, driftnet fleets are also active in some coastal areas. Recently there have been efforts by a number of Pacific nations to address the issue of driftnet fishing within or adjacent to waters of their exclusive economic zones (EEZ's — as extended in principle under the Law of the Sea Treaty which allows nations to claim sovreignty over coastal waters and resources within 200 miles of shore). Nonetheless, the majority of driftnet operations are conducted in international waters which are for the most part, entirely unregulated.

*Based on fleet size of 1400 vessels each deploying an average of 25 miles of net.

Beginning with New Zealand in 1985, Austrailia in 1986, Canada in 1987, the United States in 1988 and Peru in 1989, these nations have banned the use of large-scale commercial driftnets in their EEZ's. In 1988, a number of South Pacific island nations, including Vanuatu, Fiji, and American Samoa, also prohibited driftnet vessels from operating in their national waters, and shortly followed this action by refusing to service driftnet vessels in their ports. Even Japan, which fields over half of the world's active driftnet vessels, has expelled these ships from its coastal waters, requiring by law in 1981 that squid driftnetters establish operations east of 170 degrees E longitude- more than 400 miles from the Japanese mainland. This move was prompted when it became apparent that commercial squid driftnetters were not only threatening the livelihood of thousands of coastal fishermen, but promoting the collapse of Japan's offshore fisheries as well. This has not prevented the Japanese and others from seeking to establish driftnet fisheries in the coastal waters of other nations, or in international waters.

WHAT IS A DRIFTNET?

Driftnets are constructed of fine monofilament nylon mesh and are generally deployed in straight lines to hang in the water like large curtains. Driftnets may be anywhere from 8-15 meters deep and up to 50 kilometers in length. They are held in place perpendicular to the surface by the presence of small floats which maintain one edge of the net at the surface, and a weighted lead-line which keeps the bottom edge hanging straight down in the water. The effect is that of a nearly invisible, straight flat wall of nylon mesh that extends for many miles just under the surface of the water.

Nets are left in the water for 6-12 hours prior to retrieval. As the long sections of net are pulled on board with the aid of hydraulics, entangled species are removed by hand, and the net is stacked and made ready for the next deployment. Marketable species are "flash" frozen for immediate storage or delivered to floating processors or "motherships". Frozen catch is either offloaded periodically to refrigerator vessels at sea or transported aboard ship to port. Bycatch, comprised of undesirable or non-commercial species is dumped overboard.

Because of the light, yielding quality of the net, nearly every animal that comes into contact with a driftnet that cannot pass through the mesh runs an excellent chance of becoming entangled. In the case of squid, salmon and small species of tuna, entrapment is caused when the animals cannot pass through the mesh and are actually girdled and held captive by a single strand of line. Larger species like billfish, sharks and dolphins are similarly captured in large mesh nets or are snagged by beaks, flippers or fins and become further entangled as they struggle to free themselves. Mesh size varies depending on area and target species. Squid fishermen of the North Pacific use nets with a mesh diameter of 94-155 mm (2-3inches) while billfish and albacore fishermen utilize nets with a mesh diameter between 6-18 inches.

Constructed of fine monofilament nylon line, like that used by sport fishermen, driftnets have a transparent quality underwater and are nearly invisible. Since nets are deployed almost exclusively at night, and because they are acoustically invisible to the echo locating frequencies of at least some cetaceans, marine mammals that use sonar to navigate may often be unaware of the presence of a driftnet until they become physically entangled.

THE ECONOMICS OF DRIFTNET FISHING

Almost all driftnet fisheries are examples of what are known as distant water fishing operations, i.e., the fisheries take place far from the coastal waters of the nations actually involved in the actual fishing operations.

As a consequence, most driftnet vessls are engaged on the basis of their capacity to travel great distances and store large quantities of frozen catch on board. Vessel capacity is generally between 100-500 tons. Vessels of all sizes may return to port to offload catch, but may also be offloaded at sea to refrigerator vessels while refueling or reprovisioning. As is the case in the North Pacific driftnet fisheries, the great distance from port and the length of the fishing season make it desirable for vessels to offload catch at sea so as to maximize the amount of time given over to fishing effort.

Although some driftnet vessels were designed as driftnetters, many vessels were originally designed as longliners, and many driftnet vessels are converted longline vessels that were designed to satisfy requirements for range and storage capacity. Conversion of these vessels to driftnetters frequently required little more in the way of capital investment than the actual purchase of the driftnet itself. Most of these vessels are owned by small investment concerns and it is probable that many of these boats were paid off before their conversion to driftnetters. Most of South Korea's driftnet vessels are converted longliners, 90% of which are more than 16 years old. Taiwan's driftnet fleet is also chiefly composed of aging Japanese longliners.

Catch rates for vessels vary widely depending on the fishery and time of year although average per vessel catch rates are about 3-10 tons per day. It is not unusual for vessels of the N. Pacific squid fleet to evidence catch rates in excess of 500 tons for the season. Primary market species are red squid, salmon, tuna of all species and billfish (swordfish, marlin, etc.). Market prices for tuna and billfish in East Asian ports are generally in excess of $1000.00/ton with squid prices reported at about $3000/ton.

Because driftnet fisheries target and capture large quantities of fish that are highly migratory, and because some of these fisheries are immediately adjacent to coastal waters of other nations, disruptions of an economic nature to coastal fisheries are certain to occur. There is concern for example, that New Zealand's albacore fishery could collapse within 2-5 years from the impacts of some 160 driftnet vessels targeting tuna stocks east and west of New Zealand, just outside that country's EEZ. The combined annual harvest from historic albacore fisheries in conjunction with that from the more recently appearing driftnet fleet in the area is conservatively estimated to be effectively taking twice the maximum sustainable yield of the population.

It has also become apparent that the North Pacific squid fishermen also engage in the incidental and intentional harvesting of salmon which migrate from coastal rivers into the high seas as part of their life cycle. NOAA and NMFS enforcement agents uncovered two separate laundering operations in 1989 involving importations of millions of pounds of illegally caught salmon. Fishing organizations and fisheries representatives in Alaska, Canada and the continental U.S. have expressed great concern that these harvests by the red squid fleet could contribute to significant reductions in the return of U.S. and Canadian origin salmon to the North American continent, adversely affecting the domestic fishing industry.

THE DRIFTNET FISHERIES

In addition to the North Pacific squid fishery, driftnet fleets operate in the other parts of the Pacific and the Indian Oceans. Little is known about these fisheries beyond the size of the fleets, and data on rates of harvest and bycatch are largely incomplete or unavailable. It is likely that the negative impacts these fisheries have on wildlife are similar, and may in some cases be more pronounced because of their occurrence in tropical and or coastal waters.

Japan, Taiwan and possibly South Korea conduct salmon driftnet fisheries in the Bering Sea, primarily in areas southwest of the Aleutian Islands. The size of the Japanese salmon mothership fleet is estimated at about 200 vessels. In addition, Japan conducts a land based driftnet operation (catch is offloaded and processed at shore rather than at sea) south of the mothership fishery. This fishery is also believed to involve about 200 vessels. In 1988, Russia seized two Taiwanese driftnet vessels, claiming that they were capturing large quantities of salmon bound for Russian estuaries.

The following sections address these and other applications of driftnet fishing and represent the best available information on fleet size, time and area of operation, species affected and possible consequences to regional economies and ecosystems.

The Japanese Mothership Fishery in Alaska

In 1952, the United States, Canada and Japan signed the International Convention for the High Seas Fisheries of the North Pacific (INPFC) in which Japan agreed not to fish in certain areas of the Pacific. This convention was renegotiated in 1978 following the creation of the 200 mile limit (Fisheries Conservation Zone-FCZ), under the Magnuson-Packwood Act. The Japanese were given permission to conduct a salmon driftnet fishery in the territorial waters of Alaska , and granted a three year exemption from the MMPA contingent on their documentation of marine mammal kills. Permits for the fishery were allowed based on the belief that salmon intercepted by the driftnet fleet operating in and around the Aleutians would be primarily of Asian origin.

This fleet numbered 172 driftnetters or catcher vessels, accompanied by four factory processors or motherships, and operated from June 1st to mid-July each year. Each catcher boat employed 15 kms of net, 9 meters deep. In 1981, Congress allowed NMFS to issue an incidental take permit authorizing a maximum quota of 5500 Dall's porpoise, 25 orcas (killer whales) and 450 fur seals that could legally be taken each year within the fishery; seabirds were not covered due to a loophole in the Migratory Bird Treaty Act.

Required under general permit to provide mortality data on incidental kills of marine mammals, Japan reported 449 Dall's porpoise killed in 1978; 682 in 1979, and 999 in 1980. However, US observers put the1980 kill closer to 9,000, and a NMFS dedicated research cruise indicated that the actual kill was probably even higher. Required by law to furnish data on marine mammal populations, but unable to do so, NMFS propsed a program in 1982 to harpoon some 960 additional Dall's porpoise to provide data on sex ratios. The program was aborted but as a result the general permit for the fishery was extended until 1986.

By the time reliable statistical data for the fishery were obtained, it was clear that the effects on wildlife populations were enormous. An estimated 14,000 Dall's porpoise and over 750,000 seabirds were believed to have perished in the brief 1986 fishing season. In 1988, a federal judge ruled in favor of a lawsuit calling for a preliminary injunction against allowing the fleet to operate because of violations within the provisions of the MMPA. The Supreme Court upheld the decision in 1989. Since then, the U.S. State Department has submitted a legislative proposal to the Congress asking for an amendment to the North Pacific Fisheries Act which would allow the fishery to reopen.

Although all fishing north of 56 degrees north in the Bering Sea is scheduled to be eliminatedby 1994 (under the 1986 Annex to the INPFC Treaty), Japan may be allowed to conduct a salmon mothership fishery in 1989 within this area and inside the U.S. EEZ from June 10th to July 31st. This fishery would involve 43 catcherboats collectively deploying as much as 600 kilometers of net on a daily basis. The fishery is to last no longer than 18 fleet days and must be terminated by July 31st or at such time as salmon or marine mammal quotas have been reached. Opening of the fishery is contingent on the Japanese being granted an incidental take permit under the U.S. MMPA. Based on historic levels of mortality exhibited within this fishery, large incidental takes of Dall's porpoise and seabirds are inevitable and will be accompanied by lesser takes of northern fur seals, harbor porpoise and other marine mammals.

The Canadian Experimental Driftnet Fishery

As pressure continued to mount in the United States against the presence of the Japanese driftnet fleet in Alaskan waters, Japan began looking for alternative fisheries. In 1983, the government of Canada agreed to an experimental fishery to assess the feasibility of developing a squid driftnet fishery inside Canadian territorial waters. Conducted by the Canadian Department of Fisheries and Oceans (DFO), this experimental fishery involved 1-2 Canadian commercial fishing boats operating in conjunction with a Japanese squid vesel.

Observer reports taken during this experimental fishery in 1985 and 1986 recorded mortalities to large numbers of marine mammals and seabirds. The observer data from this period also gave conclusive evidence for the first time that even whales were often subject to entanglement in driftnets. In addition to the large number of dolphins and porpoise that were killed in the 1986 test fishery, 8 pilot whales, a beaked whale, 2 killer whales and over 400 seabirds were documented as fatalities in the nets.

Canadian Fisheries and Oceans Minister Tom Siddons promptly acted to terminate the fishery as a result of environmental concerns. In his address to the 1987 annual meeting of the International North Pacific Fisheries Commission (INFPC) he stated:

> "Given our experience, I believe uncontrolled high seas driftnet fishing represents an unacceptable toll within the Canadian economic zone. For that reason I am announcing today that Canada will no longer sponsor a commercil driftnet fishery for squid within our waters. I encourage you, as representatives of INFPC member countries to take more effective action to assess and regulate the use of driftnets in international waters."

Less than a year later, a district court judge in United States acted to invalidate the general permit issued under the MMPA which had allowed the Japanese salmon fleet to operate offshore of Alaska. As a result, all North American waters were closed to pelagic driftnet vessels.

The North Pacific Squid Fishery

Since the late 1970's, driftnet vessels of Japan, Taiwan and South Korea have conducted operations in international waters of the North Pacific. Current estimates for fleet size indicate that approximately 800 vessels are involved in this fishery with Japan having the largest number of ships in the fleet. Vessels deploy an average of 20-30 miles of net on a daily basis although some ships have been known to utilize up to 45 miles of net in a single day of operations.

Growth of the fleet has been rapid as is evident in the numbers of ships entering the fishery. The red squid fleets for Taiwan and South Korea have grown from 12 and 14 registered vessels in 1980, to 165 and 130 vessels respectively in 1988. Longer lengths of net are also being employed by individual vessels, the average amount of net being deployed by Taiwanese and South Korean vessels having increased by 300-500% since 1980.

The official red squid fishery for Japan and Taiwan is conducted from June to December each year, although many vessels cease operations in late autumn as a result of decaying climactic conditions and decreasing harvests. Japanese vessels must apply to their government for either four (August to November) or seven month permits. The South Korean fishing season for squid extends from April to January and is apparently restricted only by the commercial non-viability of the fishery during the months of February and March.

Under domestic regulations, driftnet vessels from Japan and Taiwan are required to operate within regulatory zones with a shifting northern boundary. Northern boundaries for the fisheries have been established to comply with the UNCLOS anadramous fish principle and internal laws among nations that claim jurisdiction over their anadramous salmon resources even when they migrate beyond the EEZ's of those countries. Vessels from South Korea, although under domestic regulations that prohibit the retention of salmonids, are not as yet bound by their governments to operate under time/area restrictions. Vessels from Taiwan and Japan seem to recognize the northern boundaries in principle only as indicated by the routine presence of driftnet vessels actively engaged in fishing operations well north of the boundary.

The purpose of the mobile northern boundary, which advances 2 degrees north each month from June to September and thereafter retreats south two degrees until December, is to minimize interceptions of North American salmon. Because salmon prefer waters cooler than 12 degrees centigrade, and because the northward movements of the squid tend to be restricted to slightly warmer waters (15-24 degrees), the squid and salmon runs are generally believed to be non-overlapping. Theoretically, by utilizing time-area restrictions based on models for shifting marine isotherms and the temperature preferences for the species involved, the operations of the squid driftnet fleet could be kept south of the migrating salmon stocks and US laws and policies protecting marine resources could be satisfied. In those years when climactic or hydrographic anomalies cause fluctuations in the usual temperature regime, intrusions of cold water into the regulatory area will increase the likelihood of incidental takes of salmonids.

The primary target species for the fishery consists of four small types of squid, which generally have a pink, reddish or violet hue, hence their designation as "red" squid . One of these species, *Ommastrephes bartrami*, commonly referred to as flying squid, is the principal component of squid harvests. It should be remembered that despite their designation as red squid vessels, the nets deployed by these vessels have no capacity to physically discriminate between target and non-target species, selectively catch only squid, or minimize in any real way the capture of non-target species. Vessels may use nets with different mesh diameters, larger meshes catching correspondingly larger fish while smaller individuals simply pass through the nets. Because of this it is possible to set a lower limit on the size of the species harvested if not the type of species themselves; conversely there is no known method of establishing an upper limit on individual catch size so that whales, for example, are always subject to driftnet entanglement whereas most squid would be immune from capture in a large mesh driftnet as is used to target billfish.

In effect, the red squid fishery is an opportunistic fishery which harvests any commercially valuable species present in the area, as well as many non-commercial species. It is not uncommon for "red squid" vessels to actually catch more actual tons of non-squid species, such as tuna, during certain periods of operation. Japanese reports indicate that average catch rates were 8 tons/day/vessel in 1987, and 4 tons per day per vessel in 1988 — a decrease of 50% in catch per unit effort (CPUE).

Efforts by the U.S. State Department and the National Marine Fisheries Service (NMFS) to develop an observer program within the squid fishery have met with little success. Despite the need to assess the impacts of the fishery on commercial stocks within the Pacific, cooperation by driftnet nations has been virtually non-existent. Of the thousands of commercial high-seas driftnet cruises that have taken place in the North Pacific, only three have ever carried government observers. In addition to these three observer trips aboard two Japanese vessels (1982 & 1986) and one Korean vessel (1988), a limited amount of information was also obtained in 1988 from two other sources. This represents the sum total of the only relilable data available on the entire fishery.

Because the data from these sources is very limited, not only numerically, but temporally and regionally as well, it is not possible to extrapolate this data over the entire fishery. Valid statistical determinations estimating species impacts resultant from the driftnet fishery would require several times more data gathered annually than is currently available for the entire history of the fishery.

Despite the paucity of the data on the squid fishery, it is safe to asssume that the existing data is representative of a large percentage of the driftnet vessels operating in the Pacific. A simplistic and conservative treatment of this data indicates that the squid fishery could easily be responsible for fatalities to over 100,000 marine mammals each year. When this data is considered in conjunction with the historic precedents established for the negative effects on wildlife documented in other applications of this technology, (i.e., the former US and Canadian driftnet fisheries), it is evident that there is little to differentiate the red squid fishery from its predecessors. The red squid fishery is vastly larger however and certainly capable of creating a correspondingly large degree of damage to species and stocks native to or migrating through the fishing grounds.

Although an obsever program for this fishery would doubtless be of value in assessing the impacts of the fishery to commercial species and their populations, data gathered on the negative impacts caused by the fishery to wildlife would be redundant. Driftnet fisheries have a well documented and degenerative effect on wildlife, and it is apparent that any long term presence of a driftnet fishery in a specific area would preclude the coexistence of viable populations of many species of dolphins, porpoises, seals, seabirds, turtles and small whales.

Observer data on bycatch in the red squid fleet

Korean vessel report-Sept 20-Oct 6,1982

Number of fishing days observed: 11.
Total length of net deployed: 238 kms.(34 km/day)
Mortality and composition of bycatch*:

Species	Quantity
Common dolphin(Delphinus delphinus)	11
Northern right whale dolphin(Lisodelphis borealis)	7

Japanese vessel report-1986

Number of fishing days observed: 30
Total length of net deployed: 1310.4 kms. (43.7 km/day)
Mortality and composition of bycatch:

	Quantity
Dall's porpoise(phocoenoides dalli)_	6
Northern right whale dolphin(Lissodelphis borealis)	41
Pacific white-sided dolphin(lagenorhyncus obliquedens)	8
Striped dolphin(Stenella coeruleoalba)	1
Northern fur seal(Callorhinus ursinus)	14

Korean vessel report-1988

Number of fishing days observed: 22
Total length of net deployed: app. 1126 kms.(51.2km/day*)
Mortality and composition of bycatch:

	Quantity
Northern right whale dolphin(Lissodelphis borealis)	15
Dall's porpoise(Phoecoenides dalli)	1

Vessel report-1988 (nationality withheld)

Number of fishing days observed:4
Total length of net deployed: 196 km(48km/day)
Mortality and composition of bycatch:

Species	Quantity
Common dolphin(Delphinus delphis)	1

Total observed quantity of net deployed:——2870.4 kms
Total marine mammals mortalities:——105
Average amount of net deployed per marine mammal death: ——27.3 kms.
Annual quantity of net deployed within the fisheries ——3-5 million kms.
Possible mortality to marine mammals:——109,000-181,435 individuals

*- marine mammals only.

North Pacific Billfish/Albacore Fisheries

Independent of the squid fleet, but operating adjacently, the North Pacific billfish/albacore fishery consists of some 470 Japanese vessels and an indeterminate number of Taiwanese vessels. This fleet is active in the area south of that fished by the squid fleet and depends on harvests of marlin, swordfish, albacore and other large tuna. The fishery operates from? to ? and vessel size is comprable that of the squid fleet. Billfish nets are constructed with large mesh diameters (from 8-16 inches) and tend to be slightly broader(deeper) than other driftnets.

There has never been an observer aboard a commerçial billfish vessel and little data is available on levels of catch or incidence and frequency of bycatch. Bycatch would likely consist of sharks, dolphins and whales, smaller species being precluded as a result of the large mesh size. Japanese reports indicate that the catch rates in the 1980's for billfish have dropped substantially while rates for albacore and skipjack markedly increased. It is not apparent whether this is a function of variations in fishing strategy or simply a depression in billfish population size. Though Japanese vessels were required in the early 1970's to utilize nets no longer than 15 kilometers in length although it is unclear as to whether or not these regualtions currently extend to vessels operating outside Japan's coastal management zone.

A few U.S. vessels are also involved in large mesh driftnet operations for albacore although most of this activity takes place immediately adjacent to or within the U.S. EEZ. Currently some 150-200 vessels hold special use permits in the state of California that allow them to use driftnets. Coastal dolphins, fur seals and migrating grey whales are regularly entangled and often drowned in these nets.

It is of interest to note that the first example of a large-scale large-mesh driftnet fishery involved vessels from Japan targeting bluefin tuna (Thunnus thynnus) in the North Pacific. This fishery involved over 250 vessels at its peak in 1929 but was drastically reduced as Pacific bluefin stocks declined and had finally disappeared altogether by 1940 after effectively fishing itself out of existence.

South Pacific Tuna and Billfish Fisheries

At about the same time that commercial driftnet vessels began plying the waters of the North Pacific, potential fisheries were also being explored in the South Pacific. Because of the seasonal nature of most fisheries, it was very likely apparent at the outset that vessels could effectively and profitably use driftnet technology where seasonal concentrations of target species had historically been fished in the past employing other types of fishing gear, e.g., longline and troll gear. This has led to the development of a year-round season for those driftnet vessels that choose to travel south of the equator following seasonal declines in catch rates for the northern squid and billfish fisheries.

In nearly all cases, vessel crossovers from one driftnet fishery to another are accomplished with no change in the status of the gear — the one exception possibly being changes made in the type of net that is carried on board. Some Taiwanese squid vessels are known to carry large-mesh nets on board to capitilize on chance encounters with schools of albacore. The hydraulic gear used to retrieve and stack the nets is very nearly universal and it is likely that a vessel could change nets in port in less time than it takes to refuel and reprovision. Because the transition between fisheries is so efficient, many driftnet vessels annually divide their time between fisheries of the northern and southern hemispheres. This fluid transition from one fishery to another also allows for the increased probability that many catch/harvests go unreported.

Little is known about driftnet operations in the South Pacific beyond the fact of their existence. What little information exists shows that one of the most intensively targeted species of the South Pacific is the *Thunnus alalunga* or albacore tuna. Recent developments surrounding the increased awareness of Pacific island nations to the presence of driftnet fleets targeting this species have created a tension in the political atmosphere of the region. Interests representing local and regional industries dependent on the sustainability of the albacore and billfish fisheries in the area are making efforts to close the entire southwest Pacific to driftnetters from Taiwan and Japan. With visible exceptions like that of New Caledonia, which has allowed driftnet vessels access to its port facilities at Noumea for refueling and transhipment, many nations have clearly stated the intention of denying services to driftnet vessels in their ports.

As was stated earlier, it is clear that the albacore fisheries in the region will be unable to maintain their commercial viability in the face of present rates for annual harvest. The presence of 160 driftnet vessels operating in the Tasman Sea and along the relatively narrow convergence zone where cool Antarctic waters mix with warmer tropic waters will likely cause a dramatic decrease in the annual harvests of this species almost immediately, and could possibly precipitate the collapse of any commercial fishery for albacore in the region.

Driftnetting in the Atlantic and Indian Oceans

Taiwanese vessels have conducted a seasonal fishery for albacore and billfish in the Indian Ocean for a number of years. Estimates for fleet size are unavailable but is thought to be in the range of 50-150 vessels. In any case this fleet has been accorded rseponsibility for drastically reducing the size of the albacore stocks in the area. Official indications estimate that the size of the albacore population in the area was reduced by 50% in the three year period between 1984-1987 as a direct consequence of driftnet operations. Many of the driftnet vessels operating along the convergence zone east and west of New Zealand deploy their nets across areas that coincide precisely with known migration routes for several species of great whales.

Austrailian officials estimate that the Taiwanese fleet is responsible for the deaths of about 5000 small cetaceans annually in offshore waters north of the Alaskan mainland. Spinner dolphins, spotted dolphins, and false killer whales seem to experience the greatest mortalities although whales and even dugongs, an endangered relative of the manatee, suffer mortalities from entanglement. Further west in the coastal waters of Sri Lanka, gillnet fisheries are estimated to kill upwards of 15,000 porpoises annually as well as an indeterminate number of other marine mammals.

Almost no information is availale on driftnet fishing in the Atlantic Ocean. In all probability, the logistics involved in commercial excursions of such magnitude for vessels homeported on the central East Asian mainland preclude the practicality of such ventures for all but the largest vessels. This is probably the primary reason for the lack of intensive driftnet fishing effort going on in the Atlantic, a position that would seem to be reinforced by the presence of at least two unusually large (850 tons apiece) Japanese driftnet vesels reported to be operating in the vicinity of the Falkland Islands.

Coastal fisheries involving gillnets are conducted off the East Coast of the United States (as in Massacusetts where fishermen are known to kill large numbers of dolphins each year), offshore of Newfoundland and also by the French in the Bay of Biscay in Europe. There are doubtless numerous examples of other small scale gillnet operations in the Atlantic Ocean although it is safe to say that in many of these cases there is no data available on harvest levels for target species, let alone information on levels of bycatch.

Salmon Interception

Not all the concerns over the impacts of the pelagic driftnet fleet focus on the decimation of wildlife populations. In the Pacific NW, a growing body of evidence has been gathered supporting the longtime contention on the part of commercial fishermen that massive interceptions of salmon continue unabated. Large numbers of North American bound salmon are being taken, both incidentally and intentionally on the high seas by driftnet vessels. Salmon that would otherwise end up in the freshwater spawning grounds of the United States and Canada, or in the nets of domestic fishermen, are captured in large quantities and marketed in East Asia.

Despite regulations designed to keep the driftnet fleets south of the annual salmon migrations, vast commercial quantities of salmon are offered on a regular basis in the ports of Taiwan, Japan, S. Korea, Singapore and Hong Kong. Salmon are also processed in overseas canneries in Thailand for sale and export to world markets. Violations of the regulatory zone occur frequently and Coast Guard overflights south of the Alaskan mainland regularly document the presence of driftnet vessels well outside their allowable areas for operation. Some of these vessels have been spotted so far north of the driftnet area that there is no doubt that they are specifically targeting salmon as was the case with two Taiwanese vessels sighted at 48° 20" north in June of 1988, 500 miles north of the regulatory zone imposed by their own government.

The presence of legislative deterrents such as fines and revocation of captain's licenses that mandate the return to the sea of all salmon caught in driftnets has done little to protect the stocks from foreign interception. There apparently exists in some circles an utter disregard for these regulations as is evidenced in the following communication from a major Alaskan seafood processor: "On September 8, 1988 one of our largest Japanese buyers reported to us that the Japanese market for coho had been flooded by the arrival of 1500 metric tons of coho from the Japanese squid fleet. It was reported that the vessels underwent normal off-loading of squid in Hokaido ports during the day and unloaded salmon at night." This salmon was referred to as "bycatch."

Other reports evidence the real significance of these interceptions. From a telex received by a major SE Alaska food processor on Sept. 28,1988: "Went to a cold storage facility located in Singapore and met Taiwanese principals offering sockeye, coho and pink salmon. This single facility claims to have shipped 7500 metric tons so far this year, all from North Pacific waters. They freely tell you that this fish is caught in Alaskan waters by Taiwanese vessels catching 100% illegal salmon."

Economic data compiled over a 2 1/2 month period in 1988 documented the availability of over 21,000 tons of salmon in East Asian markets. This quantity of salmon is roughly equivalent to 7.5 million adult salmon, or 15 million juveniles. It is difficult to determine what percentage of this salmon is of American versus Asian origin but as this figure probably represents only a fraction of the actual quantity taken by pelagic driftnet vessels, it seems likely that tens of thousand of tons of North American salmon are being intercepted annually by the vessels of the driftnet fleets.

Further concern stems from the occurence of large numbers of net-marked salmon that are found by domestic fishermen. The consequences stemming from high levels of "dropout", or fish which drop out of the net during retrieval, further indicate the presence of another factor depleting the salmon stocks. Because dropout rates may be as high as catch rates, and because many fish are injured and die in the course of being entangled, it is likely that a similarly large quantity of salmon that never reach commercial markets are also impacted, further reducing the amount of salmon reaching the shores of Canada and the US.

Undercover sting operations conducted by NMFS/NOAA enforcement agents in 1989 uncovered sophisticated laundering operations for importing illegally caught salmon into the U.S. In one instance two businessmen were arrested for conspiring to ship 12,000 tons of ilegally caught salmon into the U.S. over a two-year period. These arrests, the information on salmon availability in East Asian markets, the routine presence of driftnet vessels well North of the squid driftnet area, and the apathy exhibited on behalf of the driftnet nations to regulate the operations oftheir own vessels, makes it apparent that a well organized and lucrative system of salmon piracy is firmly established in the North Pacific.

The US Coast Guard boarded a driftnet vessel in July 1988 and noted the presence of salmon and steelhead aboard ship as well as a live Northern fur seal. An abandoned Taiwanese driftnetter salvaged off the coast of Washington State in March of 1989 also revealed evidence of illegal salmon harvests. Earthtrust mounted an independent expedition during Sept.-Oct. to document the activities of the fleet and returned with film footage taken aboard driftnet vessels and of driftnets being actively fished underwater.

BIOLOGICAL IMPACTS

A high percentage of marine life is concentrated in the relatively thin upper boundary layer of the ocean's surface. Air-breathing species are required to return to the surface on a regular basis, and many species come to the surface to feed (especially at night), or to take advantage of higher water temperatures. As a result, a large number of species are especially vulnerable to capture in driftnets which are fished in surface waters during evening and early morning hours.

Most fishing operations are species-specific in that they target only one or two types of species. By nature these fisheries utilize modified types of gear, operate in variable geographical locations, and evidence seasonal and environmental restraints on the amount and type of fishing effort given over to harvesting target species. For these reasons, these can be defined as "discriminating" fisheries, or fisheries that selectively catch only desired species. In fisheries of this type, (e.g., hook and line, long-line or pot fisheries) there is normally a minimal amount of bycatch and mortalities to wildlife are rare or infrequent.

In the case of pelagic driftnet fishing, there is no way to selectively target species on the basis of their desirability or preferred market status. Any creature in the vicinity of a driftnet which cannot pass through the mesh (those with a body size larger than the mesh diameter of the net) is likely to be caught. Because the nets are for the most part detectable only through physical contact, a day's catch aboard a driftnet vessel can represent an excellent sample of most species in the immediate area.

By catching and killing virtually everything in an area that moves, driftnets are able to capture entire schools of fish, decimate species of wildlife and other non-target fish, and effectively depress the populations of some species to the point that annual recruitment and reproductive rates cannot maintain pace with the losses suffered in the course of the fishery. When this happens, species become depleted and under continued fishing presssure, a downward spiral in population size develops resulting in commercial or biological extinction.

A study conducted from 1980-1984 in the North Pacific showed that squid size had decreased by 35% over this time period, indicating that even the prolific squid stocks were being adversely affected by the fishery. In the case of tuna or squid populations, recovery is generally possible in a relatively short time (several years) as a consequence of the tremendous reproductive potential that these species have. A single squid can lay upwards of a 100,000 eggs in a single year, and skipjack tuna have shown recovery rates for stocks that indicate little correspondence to annual fishing effort.

For species with low reproductive potentials, like dolphins and whales which may only give birth to a single offspring once every 1-4 years, or creatures like seals and seabirds whose numbers may already be depressed as a result of habitat destruction or other factors, recovery takes many generations and in some cases may not be possible below a critical minimum level for population size. It is certain that some if not most populations of marine mammals within the driftnet area have been seriously compromised in the ten years that this fishery has been in existence. Because many of these species are highly migratory, not unlike populations of tuna and billfish , incursions on population size effect repercussions well outside the area of the driftnet fishery.

The potential impacts of driftnetting on coastal ecosystems and populations are generally more pronounced than those observed in high-seas applications. Because many species seasonally frequent shallower coastal or delta waters in order to feed, mate, spawn, etc., and because these areas represent home-ranges for other species, coastal driftnet fisheries can literally decimate fish and wildlife populations in a very short time. Japan expelled its driftnet fleet from its own coastal waters after only 2 years when it became apparent that the region could not sustain the fishery

Fishermen of the Pacific Northwest and the South Pacific have reported large numbers of net-marked fish, like salmon and tuna appearing in their catches. Aside from depressing the price that canneries will pay for the fish, of greater concern is the inference that many captured fish are escaping driftnets but suffering injuries in the process; injuries that may often result in the death of the fish and effectively prevent their ever reaching any commercial market whatsoever. Injuries to fish and other species also expose individuals and populations to increased risk of disease and infection.

Seabirds

Levels of seabird mortality caused by driftnet fishing are consistently high. Over thirty species of seabirds are endemic to the North Pacific driftnet area including at least two species that qualify as critically endangered. The short tailed albatross (Diomedea albatrus) numbers only 200 individuals worldwide. It is interesting to note that the the only nesting ground for this species is found on the Japanese island of Torishima, 400 miles south of Tokyo. The Hawaiian subspecies (P. phacosycia sandwichensis) of the dark rumped petrel numbers only 1800 birds all of which breed on the island of Maui in the Hawaiian Islands.

Several species of seabirds suffer combined losses from salmon and squid driftnet fisheries that could account for annual mortalities of 1-5 % of their total populations. Figures based on data gathered from research vessels indicates that annual mortalities to these species could be as high as 2-3% for flesh-footed shearwaters, 0.9-4.8% for sooty shearwaters, 2-3% for short-tailed shearwaters, 3-3.5% for tufted puffins, 3-4% for horned puffins, and over 6% for Laysan albatross. In all cases these figures represent mortalities that measure in the tens of thousands, and in some instances may be as high as 100,000 birds being lost annually by a single species. These figures are approximate estimates based on limited data and could be skewed in some cases to reflect anomalies in the data base. Actual mortality is probably lower in cases for species like the Laysan albatross, but may be much higher in instances concerned with species like shearwaters which exhibit massive seasonal migrations through fishing areas.

Regardless of the actual depletion rates suffered by these species as a result of the driftnet fisheries, conservative annual estimates for combined annual mortality to seabirds number in the hundreds of thousands. The combined effects from the Japanese mothership and land based salmon fisheries alone accounted for the deaths of 300,000 seabirds annually from 1981-1984. Over half of these mortalities occurred inside the US FCZ. These salmon fisheries operate in closer proximity to land than the squid fleets and are therefore naturally inclined to greater interaction with some species of seabirds. It should be remembered however, that the squid fishery involves a much larger number of vessels utilizing much greater quantites of fishing net over a much longer season.

Marine Mammals

Many species of marine mammals, and especially small cetaceans, are especially prone to capture and death in driftnets for a number of reasons. Beyond the fact of distributions or migrations that overlap fishing areas, feeding habits, prey preference, physical and behavioral characteristics, and the nature of the fishery itself all contribute to inflicting high levels of mortality.

Pacific white-sided dolphins prefer to feed at night during those times when driftnets are deployed, and night diving species like Dall's porpoise seem especially susceptible to entanglements. Squid is also a fairly common if not preferred food source for many species; the greatest numbers of northern right-whale dolphins can be sighted in California coincidental with those times that exhibit peak abundance for squid.

Many dolphins and porpoises are extremely fast swimmers habituated to travelling across unbroken expanses of open water and are frequently trapped in driftnets before they even become aware of their presence. Some species like Dall's porpoise cannot detect driftnets with their sonar, while from underwater driftnets are essentially invisible even in broad daylight. Whales have no system of sonar comprable to that found in dolphins, and individuals encountering driftnets have even less potential for lateral movement because of their larger size. Resulting entanglements may result in massive amounts of net loss and usually result in slow death by starvation or suffocation

In the last ten years, unexplained disappearances within populations of some wildlife species have occurred in parts of the Pacific. Pribilof fur seals have shown a steady annual decline of 5-7% in population size over the last several years and it is possible that migrations through the squid fishing zone are a significant factor contributing to this trend. In the Eastern Aleutians, the populations of Stellar's sea lions has decreased by 50% in the last ten years. Rare leatherback sea turtles are also known to be frequent fatalities in driftnets, further depressing the outlook for the future of this endangered species.

Information obtained on migrating humpback whales indicates that each year, many juvenile and newborn calves fail to return from their annual northern migrations. Each spring, humpback whales travel north from the Hawaiian seamounts to the Alaskan mainland, feeding in the rich northern coastal waters, before returning to Hawaii in early winter. This annual migration across the North Pacific coincides with the presence of the red squid fleet and requires the whales to traverse the driftnet area twice a year. Although verifiable documentation does not exist showing that the driftnet fleets are responsible for these disappearances of young humpback whales, the prima facie evidence suggests that this is likely to be the case in at least some instances.

Overwintering in Alaskan waters has also been suggested as a possible rationale for this discrepancy although no one has yet been able to show that this is the case.

Biological Stripmining of the Ocean: A Case in Pointt

From February 3rd to March 3rd of 1989, the Japanese vessel Monju Maru operated an exploratory driftnet fishery in the Caroline Islands of Micronesia. The vessel dployed an average of 18 miles (29 kms) of 3" driftnet each day for a period of 24 days. During this 3 1/2 week operation, 97 dolphins, 10 sea turtles 10 pilot whales and an unidentified great whale were taken in the nets. All individuals were dead upon retrieval with the exception of two large leatherback turtles which were injured but released alive, and several dolphins which were still alive when the net was retrieved but which had their tails cut off to facilitate removal from the net.

THE SPECIES AFFECTED

Dall's Porpoise*
Northern Right-whale Dolphin*
Pacific White-sided Dolphin*
Common Dolphin*
Striped Dolphin
Pacific Grey Whale
Killer Whale
Short-finned Pilot Whale
Cuvier's Beaked Whale
Northern Fur Seal*

Leatherback Turtle*
Olive Ridley
Green Turtle
Hawksbill Turtle

Black-footed Albatross*
Laysan Albatross*
Northern Fulmar
Slender-billed Shearwater
Flesh-footed Shearwater*
Buller's Shearwater*
Sooty Shearwater*
Short-tailed Shearwater*
Pink-footed Shearwater
Storm Petrels
Tufted Puffin*
Horned Puffin*
Common Murre
Cassin's Auklette
Rhinoceros Auklette
Ancient Murrelet
Terns

GHOST NETS

Each year, large quantities of commercial driftnet are lost or discarded at sea. Because of the tendency of these nets to maintain buoyancy, sometimes for a period of several years while continuing to cach and kill marine life, they have come to be known as "ghost nets." Often beginning as long walls of net miles in length, these nets continue catching and killing large quantities of marine life until they ball up and sink or are washed ashore.

In addition to the destruction caused by nets that continue to fish untended for as long as they remain afloat, ghost nets are also hazards to navigation. Often ghost nets will temporarily sink with the weight of their victims, only to regain their buoyancy at a later date following the decomposition of catch.

In a recent report released by the Japanese government, Japan claimed that only .05% of the driftnet that is deployed each year by their fleet is lost at sea. This represents an annual loss of approximately 600 miles of net by the Japanese driftnet fleet alone.

Unknown quantities of net are also cut loose or discarded at sea as a result of entanglements by whales and other animals too large to be hauled aboard ship. Whales and large sea turtles often become so ensnared in driftnets that great lengths of netting, leadline and floatline are wrapped around the body of the animal. These creatures, which may still alive beneath multiple layers of net when discovered by the fishermen, are often simply cut adrift while still entangled in the net.

Nets which finally wash ashore often continue to entangle and kill victims, especially in rookery areas for seabirds and pinniped species. It is not at all uncommon to find seals and sealions on North Pacific beaches tangled in lost or discarded driftnet and trawl gear.

INTERNATIONAL AGREEMENTS

The pelagic driftent fleets are currently operating almost entirely outside the jurisdiction of any international fisheries management regimes. The fundamental impediment to gaining regulatory controls results from the very nature of the fishery; pelagic driftnet fleets operate primarily in international waters, outside the jurisdiction imposed by the 200-mile EEZ's of coastal nations and free from any type of international management regime.

The only fleets which are operating under the auspices of an international treaty are the Japanese mothership and land based salmon driftnet fisheries which operate under the International Convention for the High Seas Fisheries of the North Pacific. The International North Pacific Fisheries Commision (INPFC), which is comrised of the United States, Canada and Japan, administers the convention. During the last four years conservationists have requested the INFPC to broaden its scope and include other driftnet fisheries under its jurisdiction. There has as yet been no movement towards such inclusion.

All other pelagic driftnet fisheries of the Pacific, Atlantic and Indian Oceans-- and other seas where driftnetters may be fishing or prospecting for new fishing grounds -- are not subject to any international treaty. . With the exception of the internal regulations affected by Japan and Taiwan requiring driftnet vessels of the North Pacific to adhere to a regulatory zone, and in the case of the red squid fleet the strict admonitions by both these nations and south Korea as well to return salmon to the sea if they appear as bycatch, there appear to be no other restrictions in effect for pelagic driftnet vessels. As violations of these regulations are exhibited with regular and systematic frequency and because the national fisheries bureaus within those countries do not effectively enforce those same regulations, it must be understood that even these domestic regulations currently act as little more than guidelines and in actuality exist more in principle than in reality.

The problem is further exacerbated by the absence of any reliable and specific information concerning the impacts of these fleets on species and stocks of marine life endemic to the fishing grounds. With the exception of minimal data gathered from observers, research vessels and through UNFAO sources, the general absence of specific information on the largest fisheries operations being conducted anywhere in the world is nothing short of apalling. The cooperation exhibited by nations involved within these fisheries in supplying data has ranged from minimal to non-existent. The little specific data that has been submitted to date must be viewed as extremely suspicious and in many cases is more likely the product of ad hoc formulations directed towards allaying international concerns over potentially negative impacts from the fisheries. Continued statements by the government of Japan claiming that few marine mammals are killed in driftnet operations must be viewed as spurious and wantonly deceitful.

In summarizing the situation, it is apparent that Japanese, Taiwanese and South Korean driftnet fleets have been granted free license by the international community to plunder marine resources with the least degree of accountability. There are no laws, no international agreements and no enforcement bodies that require that fish stocks be harvested at biologically sustainable levels through the use of discriminate, sound and ecologically sensible methods that preserve the integrity of marine ecocystems.

The lack of structure and control for cooperative, sustainable and environmentally sound international management of marine resources in international waters represents a dramatic threat to the survival of the world's oceans in this modern day and age. It has become immediately apparent that the United Nations Law of the Sea Treaty (UNCLOS) or some other such treaty must be brought into force, and that the provisions concerning living marine resource utilization should be strenghthened to prohibit the use of destructive fishing techniques such as pelagic driftnetting in the international waters of the world's oceans.

U.S. DRIFTNET LEGISLATION

In December of 1987, the United States recognized the potential hazards inherent in the widespread use of pelagic driftnetting and passed the Driftnet Monitoring, Assessment and Control Act (H.R. 3674).

This Act calls upon the Secretary of Commerce, through the Secretary of State, and in consultation with the Secretary of the Interior, to immediately initiate negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean. The object of the negotiations is to enter into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States impacted by driftnet fisheries, and the effective enforcement of laws, regulations, and agreements regarding the location, season, and other aspects of foreign driftnet fishing activities.

In addition, the Secretary of Commerce is required to provide the Congress with a report setting forth an evaluation of the feasability of systems for marking and registry of driftnets, alternative driftnet materials, a driftnet bounty system, and a driftnet vessel tracking system.

If the Secretary of Commerce, in consultation with the Secretary of State, determines that a foreign governmen has failed to enter into and implement an adequate agreement, title IV requires that he certify the fact to the President and deems such certfication to be a certification for the purposes of invoking sanctions under the Pelly Amendment (22 U.S.C. 1978(a)). *Under the Driftnet Act, it would appear that the Secretary of State is bound to recognize the driftnet nations failure to comply as grounds for certification under the Pelly Amendment.*

This action by Congress was accompanied by an authorization that up to $3,000,000.00 be spent in order to conduct research on the affects of driftnet fishing. At present, these funds have not yet been allocated, and no progress has been made in establishing any monitoring, assessment or enforcement programs.

It is likely that some driftnet nations will continue to resist the presence of onboard observers for at least two reasons. Any agreement allowing US observers on board driftnet vessels would imply tacit acceptance on the part of these nations that the United States has authority over those fisheries resources that are seasonally endemic to US coastal and riverine areas (e.g., salmon and steelhead). As these nations have agreed in principle if not in deed to this soverignty over what could be termed the living marine resources of other nations, it would appear that the driftnet nations are resistant to the idea that any nation could challenge their freedom to operate at will in international waters.

Consent to an observer program would also serve to recognize US authority over these resources and result in the curtailment of those fisheries actively engaged in harvesting any portion of the stocks in question. There is also little likelihood that any observer programs conducted aboard driftnet vessels would yield data of a substantially different nature that that apparent in previous studies where unacceptably high mortalities to marine mammals, seabirds and other wildlife species were clearly evident. Initiation of an observer program would in all likelihood signify the beginning of the end for pelagic driftnet operations by creating a data base which could uncontestably reveal the true impacts posed by the fisheries.

Although Japan recently agreed to an observer program for 1989 (as of 5/2/89) in the North Pacific, serious consideration must be given to assessing the impacts already posed to date by ten years of unmonitored driftnet operations in the area. There is every reason to believe that population levels for species like dolphins and porpoise that are endemic to the driftnet area have already undergone significant depletions in their numbers. Future observer data will neccessarily indicate lower levels of mortality for these species than would have been evident in the past for the simple reason that there are not as many dolphins and porpoise within the area. This data cannot possibly give a realistic estimate ot the affects that have been posed to date by the fishery for these species.

PROPOSALS FOR RESOLUTION

National Policy Recommendations

Present economic relationships between Japan, Taiwan, South Korea and the United States notwithstanding, the US should give immediate consideration to the imposition of economic sanctions against driftnet nations as allowed under the Pelly Amendment. Additionally, expansion of the Pelly Amendment during this year's reauthorization of the Fisheries Conservation and Management Act should be pursued to expand the range of foreign imports which can be allowably certified for US embargo. This would dramatically increase the ability of the US to actively engage in the enforcement of responsible international policy as it relates to the protection of marine environments.

Consideration should also be given to reveiwing foreign policy involving nations which are actively engaged in the destruction of marine ecosystems and the interception of national fisheries resources. Diplomatic channels should be utilized to emphasize the point that the United States will not abide the wanton destruction of wildlife populations nor the commercial plundering of global marine resources and that steps for constructive resolution, i.e., a cessation of driftnetting, must be initiated immediately.

Simplistic approaches aimed at perpetuating further discussion of the problem must be deemed unacceptable in light of the evidence indicating the rapacious nature of this technology. In the same vein, any concilatory gestures toward the creation of an observer program to gather data must similarly be viewed as a means to prolong the existence of an unacceptable situation. There is every reason to believe that the United

States will find strong allies in their efforts to address this problem in the governments of foreign nations. The Soviet Union, Canada, Austrailia, New Zealand, and virtually every island nation of the South Pacific, have all expressed grave concerns over the effects of the driftnet fisheries, and have further backed up these concerns with actions ranging from the expulsion and seizure of vessels to the closure of port facilities. The United States should work closely with these nations to develop regulatory control over pelagic driftnet fisheries, and if necessary cooperate in the institution of economic sanctions against nations that continue to act in defiance of rational regimes for international management of global marine resources.

In addition, the present administration should review the intransigience of the Reagan administration, and move to support the advancement of the Law of the Sea Treaty. U.S. ratification would provide a significant breakthrough and generate momentum towards initiating a new era of conservation and development for international waters of the world's oceans. Allocation of funds associated with the passage of the Driftnet Act should also be expedited for enforcement policies and mitigation efforts aimed at restoring viability to populations of commercial and wildlife species adversely affected by these fisheries.

PROPOSED INTERNATIONAL ACTIONS

International measures are urgently needed to end the expansion of pelagic driftnet fisheries where they presently operate, and to halt any potential expansion into new oceanic regions. Efforts should also be advanced without delay to move towards a phase-out of the use of pelagic driftnets worldwide.

In the North Pacific, the INPFC should develop a phase-out plan to reduce the number of driftnet vessels remaining in Japan's high seas mothership and land-based salmon driftnet fisheries. Reductions should be aimed at eliminating these fisheries by 1992, after which time both high-seas salmon fisheries would cease operations.

Ther INPFC should also broaden its comprehensiveness as an international fisheries management authority, initially by working towards the inclusion of more Pacific rim nations within the Commission. INPFC member nations should make a committment to strengthen the Commission so that it can serve as an international authority over all pelagic driftnet fisheries in the North Pacific and thereby maintain the region's fisheries on a sustainable basis while insuring an adequate degree of environmental protection. As a first step, the INPFC should act to gain management of the pelagid squid, billfish and albacore driftnet fisheries of Japann , South Korea and Taiwan. Current INPFC members should work diplomatically to gain inclusion of Korea, Taiwan and the Soviet Union. Alternatively, a new and broader convention for management of the North Pacific fisheries should be developed to attain these goals.

In the South Pacific, the South Pacific Forum and the Forum Fisheries Agency should resolve that Japan, South Korea and Taiwan halt all pelagic driftnet operations in the region. Individual nations that negotiate agreeements providing tuna and billfish quotas for these nations within their EEZ's should through these negotiation processes that driftnetting operations be halted throughout the South Pacific. Moreover, all Pacific Island nations should institute port bans to halt and preclude opportunities for reprovisioning and transhipment activities by driftnet vessels in their national waters.

The United Nations Food and Agriculture Organization (UNFAO) and other organizations involved in international fisheries development should not promote utilization of driftnet techniques by developing countries which are provided with assistance. The FAO, and the United Nations as a whole, should actively support efforts to phase-out coastal and pelagic driftnetting.

New overtures should also be made to advance the Law of the Sea Treaty towards ratification as well. This Treaty should be ratified by nations that have not done so, and a provision should be included to prohibit the use of driftnets and other indiscriminate and destructive fishing techniques from use in the international waters of the world's oceans. A resolution should also be introduced into the General Assembly of the United Nations that condemns the environmental destruction caused by pelagic driftnet fisheries, and which further calls for a world-wide and expeditious phase-out of driftnet operations world-wide.

SUMMARY

In view of the magnitude and immediate danger posed by such problems as ozone depletion and escalating levels of marine pollution, driftnetting may well represent the next greatest existing threat to the health and viability of global marine ecosystems. Clearly it is an undesirable and destructive technology that has no place in humankind's responsible stewardship of the planet, nor in the future of sustainable harvests of living marine resources. Nations that continue to utilize driftnet technology in light of its negative impacts on wildlife and commercial species populations do so with full knowledge of the economic and ecological consequences of their actions. Nations that continue to passively abide by these activities do so at risk to their own and future generation's right to enjoy full benefit from the wealth of resources found in the oceans.

Technology has at last opened the vast areas of the high seas to widespread and unprecedented levels of commercial exploitation. Because future innovations will almost certainly open what have historically been international or unregulated waters to further incursions on their viability and integrity, it is both obvious and imperative that measures be taken to regulate and protect marine systems and so preclude the future possibility of plundering for the sake of short-term economic gain. The perils associated with ocean mining could very well be the next example of private and national interests creating an industry which is founded on inherently destuctive principles of operation.

Institutionalizing driftnet fishing by creating observer programs and allowing the expansion of the fishery at a time when an intelligent course of action would involve curtailment of the fishery, must be seen as impotent and ineffective measures for affecting any constructive resolution of the driftnet problem. By the same token, compromising national policies for environmental protection in order to maintain commercially exploitive activities or to protect trade relations with foreign nations is a short-sighted and mercenary approach to responsible government.

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